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Committee on Trade and Environment
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SUMMARY REPORT ON THE EIGHTEENTH MEETING OF THE COMMITTEE ON TRADE AND ENVIRONMENT IN SPECIAL SESSION

3-4 MAY 2007

Note by the Secretariat

I. PARAGRAPH 31(I): WTO RULES AND SPECIFIC TRADE OBLIGATIONS IN MULTILATERAL ENVIRONMENTAL AGREEMENTS

1. The Chairman noted that one new submission had been presented under this agenda item by the delegation of Australia. The submission, circulated in document TN/TE/W/72, was entitled "Proposal for an Outcome on Trade and Environment Concerning Paragraph 31(i) of the Doha Ministerial Declaration."

2. The representative of Australia said her delegation had taken a strong interest in the Paragraph 31(i) part of the Doha mandate in the course of the CTESS's deliberations. In its submission, Australia proposed an outcome on this part of the mandate which they considered not only conformed fully with the mandate but also accurately reflected the extensive discussions which had taken place in the CTESS over preceding years. The representative added that in drawing up the submission, Australia had aimed to reflect comments and concerns as heard from many delegations. Australia looked forward to hearing delegations' views on the proposal and further discussing the approach.

3. The representative said Australia proposed that the CTESS prepare a short, focused report of its discussions which would include recommendations setting out the main conclusions and findings of the Committee and which would propose possible future work on the issue. The report would highlight the process of the CTESS discussions as well as the content, including the three-phased approach which had been taken by the Committee: firstly, identifying the specific trade obligations (STOs) in Multilateral Environmental Agreements (MEAs); secondly, focusing on whether there had been particular implementation issues regarding those STOs; and, thirdly, discussing issues arising from the first and second phases.

4. The representative said the report could also set out the central conclusions of Members arising from the CTESS discussions. Specifically, the report could emphasize: the importance of a mutually supportive relationship between trade and the environment; the lack of evidence of problems in the relationship between WTO agreements and STOs; the importance of coordination both at the national and the international level; and the value of continuing to exchange national experiences in the negotiation and implementation of environmental agreements.

5. The representative said underpinning Australia's approach was a firm belief that the relationship between the WTO and MEAs was working well. Developments in the years since the mandate was first agreed had reinforced this position. In Australia's view, the relationship had improved and now worked better, both through enhanced coordination at the national level and more

cooperation at the international level. In the CTESS, Members had engaged in cooperation at the international level and had been informed of numerous other examples of such cooperation by UNEP and other international organizations. On this point, the representative noted that the submission by Canada and New Zealand under Paragraph 31(ii) of the mandate[1], which built upon important contributions of other Members including the United States (US) and European Communities (EC), would serve further to enhance the cooperation. The representative recalled the strong link Australia drew between effective and practical outcomes under Paragraphs 31(i) and 31(ii).

6. The representative said discussions had also highlighted the importance to the CTESS's work of national level coordination. Like many Members, Australia had in place a domestic system which worked to ensure that trade and environment issues were dealt with by both trade and environment officials. This was not something that could or should be enshrined in international law; it was something that required commitment, communication and, in the case of developing countries, increased capacity.

7. The representative said mutual supportiveness of trade and environment rules was a cornerstone of the Doha mandate on this issue and was also fundamental to the approach proposed in the Australian submission. In the view of her delegation, this contrasted with the approach put forward by the EC in its submission as contained in document TN/TE/W/68, which was discussed in the CTESS in July 2006.[2] The representative recalled Australia's serious concerns with respect to the EC's approach, which would see panels in dispute settlement cases "defer" to MEAs, creating, in Australia's view, a two-tiered system of international law with the WTO at the bottom. This was a rewriting of international law principles that was unacceptable to Australia. Australia also saw it as unnecessary given the approach taken to date by panels and the Appellate Body on environmental issues. The representative said the EC proposal would also present serious difficulties for WTO dispute settlement.

8. The representative said a further concern Australia had with the EC's approach was that it would potentially increase protectionism without helping the environment – by allowing countries to implement restrictive trade measures on spurious environmental grounds. Such measures would not then be subject to examination under usual WTO rules. In Australia's view, this would decrease trade with consequent negative effects for development. It could also seriously undermine the benefits of liberalization achieved through the Doha Round; and the environment would not benefit either. On the latter point, the representative commented that false environmental measures did not help the environment.

9. The representative said Australia had put forward its submission in a good spirit and with a willing ear. Australia looked forward to hearing comments and questions from delegations. While recognising that delegations had not had time fully to study the proposal, Australia considered it useful to submit it in time for the present meeting in order to help make progress on an outcome under Paragraph 31(i) of the mandate.

10. The representative of Argentina thanked Australia for its submission and requested that Argentina be included as a co-sponsor of the paper. The representative said the Australian submission started from the basic, fundamental platform which was an appropriate reading of the mandate and how this mandate had been interpreted since the Paragraph 31(i) exercise had begun. In Argentina's view, and as stated also on other occasions, the work undertaken in the CTESS over the course of the past six years needed to have an appropriate result. Preparation of a report reflecting the CTESS's debates and experiences would help Members to draw certain conclusions. In Argentina's view, the

[1] TN/TE/W/71.
[2] TN/TE/R/16.

conclusions proposed in paragraph 11 of the Australian submission would properly reflect the work of the CTESS and be compatible and consistent with the discussions held in that fora.

11. The representative said Argentina attached importance to the exchange of national experiences in terms of MEA implementation. He added that Argentina was particularly interested in continuing these exchanges because past discussions had shown the exchanges to be very useful for developing countries. It enabled them to hear experiences from other countries that were more advanced or more developed in terms of national coordination. Thus, the issue of exchange of national experiences and the promotion of a mutually supportive relationship between trade and environment was very important.

12. The representative noted that several delegations had observed that an appropriate use of implementation mechanisms nationally was the most direct and effective path towards ensuring mutual supportiveness between trade and environment. In this respect, Argentina believed there was space to continue moving forward in terms of exploring how developing countries in particular were undertaking their implementation tasks. Argentina also agreed with Australia on the importance that all Members work to improve developing and least-developed countries' capacity for implementation.

13. The representative noted that the Australian submission opened the door to the possibility of some kind of recommendation. In Argentina's view, such a recommendation should be aimed at a continued exchange of national experiences so that in practice and in the field there could be effective coordination. The representative said Australia's proposal was the right track to take. In this respect, no further rule-based mechanism was required because work needed to happen in practice; the representative added that the issue would not be solved with more formal instruments.

14. The representative of India said India supported the proposal submitted by Australia and agreed with Australia's approach that a report reflecting the discussions and experiences of the CTESS would be a practical outcome. He added that the mutual supportiveness of trade and environment policies in domestic policies and the sharing of national experiences would contribute to coordination between domestic agencies and stakeholders involved with international agreements to achieve compatibility between Members' international obligations and domestic implementation.

15. The representative said Australia had described accurately discussions in the CTESS on Paragraph 31(i). India particularly welcomed the emphasis on the importance of coordination at the national level in promoting mutual supportiveness between trade and environmental policies. Although domestic decision-making processes in various Members was different, there could be situations, particularly among developing countries, where the administrative structure might not be clearly defined or sufficiently integrated, resulting in problems at the implementation stage, especially if obligations under MEAs had WTO implications. India agreed with the tone and thrust of the Australian submission and its recognition of this gap.

16. The representative said India would like a more focused discussion in regular Committee on Trade and Environment (CTE) meetings on problems faced by developing countries in implementing their commitments under MEAs and on the relationship that this had to their WTO commitments. In this regard, coordination with MEA Secretariats as envisaged under Paragraph 31(ii) would be an important element of an integrated response to the technical assistance needs of concerned developing countries. Such an approach would also be in keeping with the larger development objectives of the Doha Round.

17. The representative of Mexico said Mexico supported the communication submitted by Australia. In the view of her delegation, Australia's proposal was a concrete one and consistent with

the three-phased approach of the CTESS, unlike the proposal submitted earlier by the EC[3] which was unlimited in its scope. Mexico fully agreed with the message contained in the Australian submission that the relationship between WTO rules and STOs in MEAs had been useful and good. This message and other messages proposed in paragraph 11 of the Australian submission were shared by Mexico. This was why Mexico viewed the Australian proposal as being on the right track; it complied with the mandate and reflected the discussions that had taken place.

18. The representative of Indonesia, speaking also on behalf of Brunei Darussalam, Malaysia, Philippines, Singapore and Thailand, welcomed the new submission from Australia as one that would stimulate new discussion on a part of the mandate that the CTESS had not engaged in for some time. Sharing initial reactions, the representative said Indonesia was on the whole supportive of the general direction proposed in the submission, namely, that a practical outcome be pursued and that the CTESS's past discussions under Paragraph 31(i), employing the three-phased approach and during which Members were able to learn from as well as share their national experiences on implementing STOs of various MEAs, be outlined. The representative further agreed that one of the important elements in the WTO/MEAs relationship was the capacity to achieve effective domestic implementation and coordination between different agencies. Most importantly, Indonesia agreed with Australia's point that the relationship between WTO and STOs contained in MEAs was working well.

19. With regard to paragraph 5 of the Australian submission, the representative sought clarification as to whether the six MEAs identified as having STOs would form an exhaustive list or whether there might be other MEAs which also contained STOs. The representative said the Australian submission would be studied further and substantive comments provided. While Indonesia did not have a fixed idea as to what outcome might be envisioned under the Paragraph 31(i) mandate, they were generally supportive of some of the elements in the latest submission and as outlined by the Australian representative.

20. The representative of China said China's initial reaction was that the Australian submission was a very good paper and his delegation supported its general thrust. The representative made two points: first, China supported Australia's idea of a short, substantive paper as a practical outcome. Second, China also supported the main proposals made by Australia in paragraph 11 of its submission. In particular, the representative highlighted the importance of coordination at the national level in promoting mutual supportiveness between trade and environmental policies. He added it was not simply about implementation of obligations or coordination for the negotiations; China believed it was a general coordination at the national level in promoting mutual supportiveness between trade and environment policies. In general, China viewed the Australian proposals as appropriate and correctly reflective of the feelings of the majority.

21. The representative of Egypt said his delegation had had a short span of time to reflect on the Australian submission. Nonetheless, Egypt felt the submission went in the right direction and clearly embraced what his delegation had said repeatedly: that there was no particular problem between WTO agreements and STOs within MEAs. Agreeing with previous speakers, the representative said there was an important need to do more in terms of raising the capacity of developing countries at the national level to coordinate their policies and to be in a position to fulfil the supportiveness between environment, trade and development. This was a point his delegation had made in the past. The representative added that the proposal by Australia linked with Paragraph 31(ii) and other proposals made by Members, particularly those referring to the importance of capacity building for developing countries.

[3] TN/TE/W/68.

22. The representative said that having read the Australian submission and reflected also on the proposal submitted earlier by the EC[4], his delegation felt there was no need to alter international law nor suggest that certain obligations at the international level had more weight than others. Egypt did not favour this position and nor did his delegation believe it could help to push forward the mutual supportiveness that was being sought on trade and environment.

23. Referring to recent international dialogues including French presidential debates and discussions in the EC, the representative said a new frontier was being suggested in which environment would become a conditionality in the international economic architecture. In this regard, Egypt did not wish to see a situation emerge where instead of Members working towards a better and well-coordinated mutual supportiveness between environment and trade, one of the pillars would be a condition for further development in that area - which would be a kind of sharp sword on the throat of many developing countries in terms of the STOs stemming from MEAs.

24. The representative said developing countries needed further capacity building in their national coordination and continued exchange of experiences with countries that had already put together national policies that were working and which were bringing results in the environmental and developmental arenas and further access to environmental goods and services at the trade level.

25. The representative of New Zealand said his delegation had long held the view that the Paragraph 31(i) component of the negotiations was important and that an outcome should be possible. New Zealand therefore welcomed the opportunity to engage substantively on this component, not least in the context of the latest submission from Australia, which had been co-sponsored by Argentina.

26. The representative noted that, like other Members, New Zealand had appreciated and found useful the reviews of national experience. When Australia had originally proposed this process, New Zealand supported the concept based on a view that sharing perspectives could help shed light on the way ahead on Paragraph 31(i). New Zealand had learnt a great deal from the exchanges in the CTESS. It was a rich dialogue and New Zealand appreciated particularly the written submissions from, among others, Australia, EC, Switzerland and Hong Kong, China. The discussion of these submissions as well as the range of statements and comments had helped to inform thinking on the decision-making processes at national levels. Above all, the exchanges had underlined the importance of policy coherence between trade and environment officials when working in areas touching on the WTO/MEA relationship. The representative said all of this had been crisply captured in Australia's submission and New Zealand especially appreciated its summary of exchanges on the national experiences element of Paragraph 31(i).

27. The representative said that from New Zealand's perspective, any outcome under Paragraph 31(i) needed to reflect the exchanges in the CTESS. As Australia's paper had made clear, this meant there should be some acknowledgement of the Committee's exchanges on national experiences.

28. More particularly, New Zealand supported Australia's suggestion that the importance of national coordination should be underlined. New Zealand further agreed with the suggestion in paragraph 11 of the Australian submission that it was desirable for WTO Members to undertake national level coordination in the negotiation and implementation of obligations contained in WTO agreements and MEAs to which they were parties. As well, New Zealand had no difficulty with the proposal in paragraph 12 of the submission that there might be a recommendation to build on the exchanges and continue sharing experiences in the context of the CTE regular session. New Zealand was attracted, for instance, to Australia's suggestion that Members share further their experiences in

[4] TN/TE/W/68.

the CTE in terms of negotiating and implementing STOs. New Zealand also believed there were helpful linkages between the latter suggestion and the proposal which New Zealand and Canada had recently made under Paragraph 31(ii), on information sharing.[5]

29. The representative said there were other aspects that the CTESS might wish further to consider. He asked, for example, what the CTESS might distil from its exchanges not only on national experiences but also on the more general elements such as STOs, dispute-related matters or the relationship between WTO agreements, relevant WTO bodies and MEAs? The representative suggested the CTESS could consider how those more general exchanges might help Members in fulfilling the mandate.

30. For its part, New Zealand had been pleased to participate in all parts of the CTESS dialogue on all of the issues raised under Paragraph 31(i). For instance, New Zealand had offered initial thoughts on STOs in a submission compiling information on trade provisions in a number of MEAs. The representative added that New Zealand had also been frank in clarifying things they were not able to accept, not least in terms of some of the ideas contained in the submission by the EC.[6] Taken together, New Zealand was of the view that the full dialogue in the CTESS had been very useful and interesting and the Committee might consider how it could reflect the richness of those exchanges in any outcome.

31. The representative said that against this background, his delegation had undertaken some reflection of its own. New Zealand's starting point had been that the scope of the negotiations needed to reflect the mandate. The negotiations were, for instance, expressly limited to the applicability of existing WTO rules to MEA parties; further, they should not prejudice the WTO rights of any Member not party to the MEA in question. Moreover, by Paragraph 32 of the Doha Ministerial Declaration, the negotiations under Paragraphs 31(i) and (ii) should not add to, diminish nor alter the balance of rights and obligations of Members under existing WTO agreements. A further important consideration, as highlighted by previous speakers, was the need to take into account the needs of developing and least developed countries. The representative said these were very important elements and, as pointed out by Australia in paragraph 4 of its submission, they needed to be factored into any consideration of outcomes under Paragraph 31(i).

32. The representative noted that New Zealand had had recent experience in implementing STOs contained in those agreements referenced in paragraph 5 of Australia's submission. In applying those STOs, New Zealand had in some cases voluntarily engaged in bilateral consultations with other parties. The purpose of those voluntary consultations had been to establish how best to secure a good environmental outcome from implementation of the relevant STO. The representative explained that when New Zealand had engaged in voluntary consultations, they had often discovered some interesting things. For instance, they had learnt that the mechanisms they were contemplating to use in applying an STO might work very well and very effectively in some cases, but less effectively in other cases. Through voluntary bilateral consultations, New Zealand had learnt also that in order to improve environmental outcomes from the STO being applied, as required by an MEA, they sometimes needed to undertake technology transfer or use development assistance to fund training. In other cases, improved information exchange and funding of specialized technical assistance had helped to create better and more efficient environmental outcomes.

33. The representative said that from its experience, New Zealand wondered whether there might be some value to others in such a strictly voluntary process – whereby discussions could be held, if Members wanted such, on the implementation of STOs. The representative said such a dialogue might helpfully bring into focus a range of policy options, including technology transfer, development

[5] TN/TE/W/71.
[6] TN/TE/W/68.

assistance and information exchange. All of these options would be considered solely for the purpose of ensuring an efficient and effective implementation of a trade measure or an STO, such that its application would deliver the best possible environmental outcome.

34. Given that the process would be entirely voluntary and non-prescriptive, it was New Zealand's view that this kind of approach would not stray outside the terms of the mandate. It would not add to, diminish nor alter the balance of rights and obligations of Members under existing WTO agreements. The representative added that it might also offer a way to take into account the concerns and needs of developing and least developed countries, as outlined in the mandate. Moreover, the suggestion might usefully complement the national experience submission from Australia since it would offer a further way of improving domestic coordination processes.

35. The representative said this was a suggestion New Zealand wished to offer to the CTESS's rich dialogue. New Zealand was considering whether and how the suggestion might be developed into something more formal. New Zealand reiterated its appreciation for Australia's submission and reiterated also its view that the submission had helped to identify some of the core elements of any outcome that the CTESS might collectively work towards under Paragraph 31(i).

36. The representative of Switzerland thanked Australia for its submission, co-sponsored by Argentina, proposing a report on experience sharing as a result under Paragraph 31(i). She said since her delegation had received the submission only a day earlier, she would have only preliminary comments and questions.

37. The representative recalled Switzerland's position, as stated at previous meetings, that the sharing of national experiences with respect to the negotiation and implementation of STOs in MEAs had been a useful exercise. She recalled also that Switzerland had contributed to the exercise. But, in Switzerland's view, this was not enough to fulfil the mandate given by Ministers in Doha, for three reasons. First, while national level coordination between different domestic agencies and stakeholders was important to achieving compatibility between countries' international obligations and domestic implementation, it would not be a sufficient condition; policy coordination at the international level was needed as well in order to avoid potential conflicts.

38. Second, experience sharing was a backward looking exercise. Although negotiators of both MEAs and WTO provisions should certainly strive to ensure mutual supportiveness so that no dispute would arise, there was no guarantee of success in avoiding conflict at the implementation stage. The representative added that the fact that no major conflict had arisen between the two sets of rules to date did not automatically imply that there would be no conflict in the future, especially given a steady growth of interface between the two sets of law. Third, and following from the previous point, with a view to ensuring the appropriate consideration of environmental issues by WTO bodies and Members, such a report as proposed by Australia would not give any guidelines in case of dispute settlement.

39. For Switzerland, a report on the deliberations of the CTESS would not be a sufficient result from the negotiations. The representative recalled that the EC had tabled in July 2006 a proposal indicating some of the principles which Ministers could agree upon in the negotiations under Paragraph 31(i).[7] Those principles were to be seen as an interpretation and not an alteration of law. The representative asked Australia to explain the thinking behind having a report as an outcome of the negotiations. In Switzerland's view, a report would be a useful instrument to increase transparency and towards enhancing the mutual supportiveness of trade and environment, and might also be a good instrument for regular information exchange between the WTO, MEAs and the respective parties fulfilling the mandate of Paragraph 31(i).

[7] TN/TE/W/68.

40. The representative raised additional questions regarding the Australian submission. With respect to paragraph 5 referring to six MEAs for which STOs had been identified, she asked how could a report take into consideration STOs of possible future MEAs? With respect to paragraph 3 referring to a decision on a "three-phased approach", how had this decision been agreed among Members?

41. The representative said given that both systems – MEAs and WTO – were dynamic and evolving continuously over time, it was important to clarify the principles governing the relationship in order to ensure mutual supportiveness. The two systems should not evolve in isolation from each other. Whether it was in order to improve international cooperation when devising a new STO, or in order to ensure that an STO was implemented in a manner consistent with international obligations, Switzerland was of the view that a discussion and clarification of the principles governing the relationship between WTO and MEAs would be useful and necessary and in fact responded to the mandate given by Ministers in Doha.

42. The representative of Chinese Taipei joined previous speakers in expressing appreciation to the Australian delegation for its proposal for an outcome on trade and environment under Paragraph 31(i). Chinese Taipei noted that Australia proposed to pursue a practical outcome under Paragraph 31(i) and accurately reflect the discussions and experiences in the CTESS – through the preparation of a short but substantive report highlighting key observations from the CTESS discussions and setting out areas of agreement and recommendations. The representative asked the Australian delegation to clarify whether the practical outcome of the Paragraph 31(i) negotiation would be the report *per se* or if there were other arrangements or decisions required to be undertaken by Members.

43. The representative said Chinese Taipei had sympathy with the position of Switzerland that simply because there had not been any conflicts between MEAs and WTO rules did not indicate that that there was no conflict between STOs set out in MEAs and WTO rules. Chinese Taipei did not have a strong view as to whether the report proposed by Australia fulfilled the Paragraph 31(i) mandate. Chinese Taipei would join Members' consensus. If Members decided to come up with a report as proposed by Australia, Chinese Taipei would reiterate that the report should include factual and objective observations and reflect the discussions among Members in the CTESS and should not prejudice the positions of individual Members.

44. The representative reiterated Chinese Taipei's appreciation of the Australian contribution in proposing the practical concepts contained in its submission. She also emphasized the importance of having due regard for coordination at the national level in promoting mutual supportiveness between trade and environment policies. Chinese Taipei intended to continue actively to engage in the important negotiations with all Members in the firm belief that such negotiations should not prejudice the WTO rights of any Member that was not party to the MEA in question.

45. The representative of Ecuador joined other delegations in thanking Australia for its submission, which had been co-sponsored by Argentina. The submission had been sent to capital. The representative said her delegation believed the mandate of Paragraph 31(i) coincided with the focus that had been presented by Australia and she added that this should lead to a pragmatic debate on the identification of STOs set out in MEAs.

46. The representative recalled that as part of the CTESS's discussions, some Members had submitted papers to the Committee with a focus and approach on national experiences, with the aim of better understanding the existing links between MEAs and WTO rules. In this context, and as had been pointed out by others, coordination at the national level among the various players with regard to coordination and implementation of international agreements was extremely important in order to fulfil the mandate. The positive results, for example implementation of the Montreal Protocol,

battling depletion of the ozone layer, and for the environment, as well as their compatibility with trade, were evident. Also, as pointed out by New Zealand, there was a need for international cooperation in order to bring into line certain points with respect to the environment for developing countries. Internal or domestic cooperation and international cooperation through transfer of technology and strengthening of capacity building, rather than negotiations, was important for the compromises which might facilitate mutual supportiveness between trade and environment.

47. The representative added that her delegation was not aware of any cases whereby a lack of mutual supportiveness between trade and environment within the WTO had taken place. Thus, Ecuador believed the current mandate under Paragraph 31(i) should not amend areas of competence nor establish legal subordination of one body of rules over another. Rather, the focus should be on promoting mutual supportiveness in order to fulfil the mandate.

48. The representative of Hong Kong, China thanked Australia for its submission. While his delegation needed time to study it further, Hong Kong, China's initial reaction was that it was a positive contribution. Hong Kong, China had consistently attached importance to the Paragraph 31(i) mandate and considered that any outcome should be strictly within the mandate. One of the important aspects of the mandate was that the negotiations should not prejudice the WTO rights of any Member; in this regard, the Australian submission suggested an outcome that was well within the mandate. Also, Hong Kong, China believed the observations in the Australian submission accurately reflected the views and sentiments of Members in the CTESS, for example with respect to the importance of coordination at the national level and also that Members should continue to share national experiences concerning the negotiation and implementation of STOs in MEAs.

49. The representative of Hong Kong, China noted Switzerland's description of the reviewing of national experiences as a backward looking exercise. In the view of his delegation, this was also an important step for the CTESS to go forward. As well, Hong Kong, China agreed with Australia's observation that the relationship between WTO agreements and STOs in MEAs was working well; with this in mind, Hong Kong, China did not see the need of any measures to counteract speculative problems between the MEAs and WTO. Hong Kong, China also agreed that the national experience sharing exercise should continue so that Members could continue to learn from previous experience. In signalling that his delegation might have further comments in the future, the representative of Hong Kong, China expressed the hope that the Australian submission could be the basis for future discussions on Paragraph 31(i).

50. The representative of Norway thanked Australia for its submission which was still being studied in capital. Offering preliminary comments, the representative said the Australian submission presented some useful ideas on how to fulfil the mandate on Paragraph 31(i) and in that respect was a valuable input to the CTESS's negotiations. Norway wished to underline, however, that the submission needed to be seen in a context with other submissions already submitted under the mandate including, for example, the EC's submission in 2006[8], the Swiss submission in 2005[9] and Norway's submission in 2003.[10] The representative said all these submissions contained important elements that should be kept on the table.

51. The representative commented on some aspects of the Australian submission. First, with respect to the idea of a report, this could be a useful instrument *inter alia* to increase transparency and increase the mutual supportiveness of trade and environment. However, Norway questioned whether a report provided a sufficient response to the mandate under Paragraph 31(i). Regarding paragraph 5 of the Australian submission, the representative asked whether the listing of MEAs in this paragraph

[8] TN/TE/W/68.
[9] TN/TE/W/61.
[10] TN/TE/W/25.

was intended to constitute an exhaustive list of relevant MEAs. In this regard, Norway might be concerned about any WTO process that could imply that the WTO had defining authority as to what constituted an MEA or a specific trade measure between parties to such MEAs. In a similar way, Norway wished to point to some difficulties with the summing up of elements in paragraph 7 of the Australian submission which referred to some Members and where certain elements from the CTESS discussions were emphasized while others were not. The representative noted also in this regard paragraph 2 of the Australian submission which proposed a practical outcome be pursued under Paragraph 31(i) reflecting the discussions and experiences in the CTESS. Norway questioned as well whether it was relevant to continue discussing in the CTE STOs between parties to an MEA, as proposed in paragraph 12 of the Australian submission, after the CTESS mandate had been fulfilled. Expressing a further point with respect to mutual supportiveness and coordination at the national level, the representative agreed with previous speakers, including India and Egypt, that capacity building in that area should be enhanced. Norway had informed the CTE of its efforts in this regard.

52. The representative of Japan thanked Australia for its good contribution which had been co-sponsored by Argentina. Referring to an earlier intervention, he said he shared most of the views put forward by the New Zealand delegation. Expressing preliminary comments, the representative said that while the exchange of national experiences had been a good part of the CTESS negotiations, it was not enough nor sufficient to fulfil the mandate. In his view, more could be done. From another perspective, in particular the EC submission tabled in 2006, Japan had some concerns especially with regard to the relationship between the obligations of MEAs and the obligations of WTO; from Japan's perspective, the EC submission went too far. The representative said Japan wished to work with Members to try to find a way forward or some convergence. In this regard, the representative expressed interest in working with New Zealand on some future papers.

53. The representative of the European Communities (EC) thanked Australia for its constructive engagement on Paragraph 31(i), including its current submission. In the view of the EC, Australia's proposed report and recommendation approach was an insufficient response to issues that the EC was seeking to accommodate on the interface between two legitimate bodies of international law. In this regard, the representative emphasized that MEAs were a legitimate body of international law. Thus, the objective was to achieve mutual supportiveness between the two bodies of law.

54. The representative expressed surprise at comments by previous speakers to the effect that the Australian submission accurately reflected discussions in the CTESS. While noting that the submission referred to such elements as definition of STOs and exchanges of national experiences, the representative said there were many other important elements of discussion in the Committee that were wholly absent in the submission including with respect to international coordination and the debate introduced by Switzerland on possible conflict of law. As well, recalling the CTESS's discussion in July 2006[11] on the EC proposal containing substantive elements on dispute settlement, the representative further observed that there was no reference in the Australian submission to dispute settlement. In this context, the representative said he was not convinced that the Australian submission accurately reflected the scope of discussions held in the CTESS.

55. The representative said that on first reading of the Australian submission, his delegation's initial feeling was that the report was essentially instructing the Committee to be very short sighted, to be backward looking, and to treat tomorrow as if it were the same as today. In this regard, he commented that simply because there had been no problems did not mean no problems would occur in the future. The representative contrasted the Australian submission with the EC's proposal (TN/TE/W/68); he described the latter as forward looking and an effort to get ahead of the curve.

[11] TN/TE/R/16.

56. Noting that a number of speakers had referred to the EC's submission, the representative reminded the Committee of what was contained in the proposal and emphasized that it was not a revolutionary proposal but rather was essentially an evolution of existing trends in international law. Under the substantive provisions on dispute settlement, the EC proposal had stated that in the event of a dispute, a WTO panel should call for and defer to the expertise of the relevant MEA. The representative reiterated that this was not a revolutionary principle but rather reflected legal trends in both bilateral and multilateral law. In bilateral terms, the representative gave the example of Article 104 of NAFTA which provided that specific trade obligations in certain MEAs shall prevail in the event of any inconsistency with NAFTA provisions. The representative added that it was not only NAFTA; there were a large number of Free Trade Agreements that had been signed post-NAFTA which had precisely the same provision.

57. In the multilateral legal context, the representative said Members needed to look no further than WTO agreements. The Financial Services Agreement stated that in the event of a dispute, financial services experts shall be consulted. This was not as ambitious as the EC would like, but it was there. The representative said the clear message to get across was that the EC proposal was essentially something that already existed.

58. The representative added that the Paragraph 31(i) negotiation was also part of a negotiation for a global environmental outcome and he referred in this regard to Paragraph 51 of the Doha Ministerial Declaration. The representative recalled that when the EC proposal was presented in July 2006, his delegation had talked about a "real life" dispute in a fisheries context. More recently, there had been an interesting discussion in the Negotiating Group on Rules with the submission of a new paper containing dispute settlement provisions. The representative said this was not an EC paper but it was a paper that stated clearly that in the event of a dispute on a fisheries issue, fisheries experts should be convened and consulted. In this context, the representative reiterated the goal of a global environmental outcome; he added that what was good for financial services regulation and good for fisheries should also be good for multilateral environmental agreements.

59. The representative referred to the interventions by New Zealand and Japan and said the EC looked forward to seeing precisely what they had in mind with respect to voluntary consultations. The EC would reserve its position until it saw something in writing. That said, the representative noted that there had been a reference to dispute settlement in one of those interventions and the EC agreed entirely that this topic had been an aspect of the CTESS discussions and should be reflected in any outcome on the Paragraph 31(i) negotiations.

60. The representative of Brazil thanked Australia for its constructive document that summed up well the discussions that had been held in the CTESS for a long period. She noted that the submission acknowledged the importance of coordination at the national level and recognized also each Member's efforts to coordinate both trade and environment policies. She added that it provided good incentive to countries to continue pursuing those goals.

61. The representative said the submission also helped to clarify that there were two major positions; one set by the EC and another set by Australia and other Members supporting Australia's position. But there was also a middle ground as could be discerned from the interventions of some delegations including Egypt, New Zealand, Ecuador and others suggesting that the kind of document or report proposed by Australia would not be sufficient to fulfil the mandate.

62. The representative said that from Brazil's perspective, a major concern with the submission was that it contained no mention of the question of development. Relatedly, and despite Australia's suggestion for a feasible and workable outcome from the negotiations, the submission did not shed light on what came next. Therefore, the submission was not so much a proposal as a report and did

not shed light on how to achieve sustainable development and how to strengthen the mutual supportiveness between trade and environmental policies.

63. The representative said Brazil was in favour of working on proposals that would help the CTESS fulfil the mandate. In Brazil's view, the EC proposal was extreme but they had mentioned that there should be discussion on international coordination. Brazil would be comfortable working on the aspect of international coordination but this would not extend to setting a hierarchy between the different bodies of law.

64. Referring to the intervention by the EC, the representative of Brazil saw a difficulty with the reference to fisheries. While the EC had said that dispute settlement provisions could work well in other areas and in other agreements, fisheries was an element within the realm of the WTO. In contrast, under Paragraph 31(i) the focus was on other organizations and other agreements. In this sense, the representative agreed with the comment made by Egypt that environmental conditionalities were a new trend in the elaboration of trade laws. Under Paragraph 31(i), the discussion concerned different sets of rules, rules that were not the core issues of the WTO. The representative said there was a need to respect each country's particular needs.

65. The representative referred to the intervention by New Zealand and said the proposal of achieving the goal of development through such options as technology transfer and technical assistance was a valid one and should be analyzed by Members since the development issue should permeate all discussions in the CTESS.

66. The representative of Chile thanked Australia and Argentina for their submission which was being studied in capital. He made preliminary remarks on the document. The representative said Australia and Argentina's proposal of a factual report on discussions in the CTESS – with particular attention to ideas related to the need or importance of domestic coordination – was an important idea and would, or should, adequately cover discussion on one of the tracks in the Paragraph 31(i) negotiations. However, as mentioned by New Zealand, there was also a second track of discussion which covered a wealth of additional elements. The EC had mentioned some elements; while Chile did not necessarily agree with all of them, they did agree that there were elements from the CTESS discussions that were not reflected in the proposal put forward by Australia and Argentina, including elements that Chile would wish to see included in any possible outcome of the negotiations. In the latter regard, the representative referred to the CTESS's discussion on such aspects as dispute settlement, the definition of an MEA, role of MEAs, and regional environmental agreements. These were areas where Chile would wish to see some kind of reflection.

67. The representative said that Australia and Argentina's proposal reflected the discussion well and his delegation would appreciate the proposed focus on national level coordination, which was indispensable. However, the outcome of the proposal would be a snapshot of a given state of time in mankind's history and this would not help to guide Members in the future in terms of the relationship between dynamic elements and dynamic regimes. In this regard, the representative recalled that the mandate from Ministers did not talk about achieving a specific snapshot but rather talked about a relationship over time between WTO rules and STOs in MEAs. On a related point, the representative asked if the list of MEAs in paragraph 5 of the submission was exhaustive or were the sponsors thinking of something more?

68. The representative reiterated that his delegation did not object to Australia and Argentina's proposal. However, this would address only one of the tracks of CTESS's discussions and Chile had an interest in the second track as well which could be another outcome of the negotiations.

69. The representative of the United States (US) thanked Australia and Argentina for the submission. The US appreciated the ideas outlined in the document. The US also shared the view of

many other Members that it was a very good paper and approach to the Paragraph 31(i) aspect of the mandate. This was because it fully reflected, in the view of the US, discussions held in the CTESS, particularly with respect to exchanges of national experiences. The representative said the "value added" of what Australia and Argentina had proposed was that it allowed Members to collect together the positive lessons learnt about the WTO/MEA relationship and lessons on which Members could all agree, as opposed to other aspects where Members might not have been able to reach agreement. The representative further observed that the relationship was working well and she highlighted a number of aspects that were important to the relationship, including: domestic coordination and ensuring that the negotiation and implementation of STOs in MEAs was coordinated among trade and environment experts so as to achieve mutual supportiveness; and ensuring the proper design of STOs, for example that they were science-based.

70. The representative said the submission captured all the important lessons learnt as well as other issues that Members believed were important to ensuring a successful relationship, not just in the present but also into the future. She further observed that the report proposed by Australia and Argentina would also include recommendations on how Members might continue to discuss the issues and continue to ensure there was effective domestic coordination in capitals. The representative added that the US would agree with Members who had said international coordination and information sharing were also important aspects. On the latter, this aspect was explicitly reflected in the mandate and would be addressed when the CTESS discussed Paragraph 31(ii). The representative said there were clearly linkages between Paragraphs 31(i) and 31(ii).

71. The representative said her delegation did not believe there was a need for abstract principles with respect to the WTO/MEA relationship, which could have broad and unknown impacts on Member's WTO rights and obligations. The US had already made clear it would have serious concerns with what the EC had proposed in July 2006 on this aspect – in terms of the impacts on Member's rights and obligations. The US did not think this was a good approach to take; it was not warranted by the discussions held in the CTESS and was not within the mandate.

72. The representative said a further advantage of the proposal of Australia and Argentina was that it respected the different competencies of the WTO and MEAs. For its part, the US wished to balance the two bodies of international law and not in any way get into the competencies of other organizations. Related to this aspect, the representative sought clarification with respect to an idea put forward by New Zealand on the provision of technical assistance. Specifically, would the WTO be providing assistance to countries who were implementing MEA obligations or would it be the actual MEA secretariats providing such assistance? For its part, the US would have concerns about WTO advising MEAs or parties to MEAs on how to implement obligations under those agreements.

73. The representative reiterated that the US was supportive of the type of approach proposed by Australia and Argentina. It reflected the agreement among Members in the discussions that the relationship was working well and also collected together lessons learnt as to why this was the case. Those lessons could also form the basis for Members efforts to ensure the relationship continued to work successfully. The US strongly supported the approach as a basis for continued discussion and work under the mandate. Further, in the US view, the approach captured the common ground among Members' views and positions in the Paragraph 31(i) negotiations.

74. The representative of Nicaragua joined other speakers in thanking Australia for its submission. The submission had been referred to capital and in the meantime the representative had brief preliminary comments. In Nicaragua's view, the submission put forward by Australia was very important, particularly because it underscored three main elements: consistency of policies at the national level; exchanges of experiences in the implementation of MEAs; and creation of capacity building for developing countries. That said, Nicaragua also shared concerns expressed by Brazil with regard to the question of continuity and what would happen when the report was drafted so as to

ensure the mandate was addressed. Nicaragua also believed that the elements highlighted by New Zealand with respect to technology transfer and development assistance should be essential pillars in order to achieve effective results in the Paragraph 31(i) negotiations.

75. Responding to the discussion, the representative of Argentina said the debate had been rich and substantive and would help move forward the Paragraph 31(i) negotiations. He added, however, that issues and differences remained. The representative observed that some delegations were still viewing the mandate from a legal and dogmatic perspective; in this regard, the EC had commented that WTO and MEAs constituted two legitimate bodies of international law and the Committee should look at their interface. The representative said MEAs did indeed constitute a body of international law, but this was not the issue upon which the CTESS needed to focus. In Argentina's view, the CTESS needed to address itself to the practical experience of discussions that had been held in the Committee. In this regard, the discussions had provided no evidence of conflict between WTO rules and MEAs.

76. The representative described the EC proposal as contained in document TN/TE/W/68 as a work of magic to the extent that it did not reflect the CTESS discussions nor the evidence that had been presented. In this regard, the representative noted that there had been six years of discussions and debates and that analysis had also been carried out with regard to MEAs and STOs. The representative said his delegation was open to learn of possible conflicts between WTO rules and MEAs. However, Argentina's analysis had shown that the relevant provisions in MEAs were expressed in the positive form while WTO obligations were expressed in negative form. In his view, this precluded the possibility of conflict.

77. The representative commented that the objective was to achieve mutual supportiveness between trade and the environment. To achieve this objective, Members needed to work on a practical level in terms of coordination. In Argentina's view, by increasing coordination at the domestic level, Members would contribute to mutual supportiveness at both national and international levels.

78. The representative said the Australian proposal would produce more than a static snapshot, as had been suggested by a delegation. Looking at ways to enhance levels of coordination at the domestic level meant the proposal was dynamic. Finally, the representative referred to other statements made, including by New Zealand; he said it would be useful to learn of New Zealand's experience with respect to voluntary consultations. The representative reiterated the importance of achieving an outcome in the Paragraph 31(i) negotiations that was pragmatic and based on work undertaken in the Committee.

79. Responding to the discussion, the representative of Australia thanked Argentina for co-sponsoring the submission and thanked also those delegations that had provided comments and views. She said her delegation had been heartened by the level of support expressed for Australia's proposal.

80. With respect to questions raised as to why paragraph 5 of the submission focused on six MEAs, the representative recalled that in considering which MEAs contained STOs, and in considering what came within the mandate, the CTESS received suggestions from some delegations that there were other MEAs with STOs. However, Australia's analysis of other agreements suggested they were not multilateral in approach or did not have environmental protection as a main focus or did not contain STOs. Having said that, the representative added that in referring to the six specific MEAs in paragraph 5, Australia was attempting to reflect the discussions that had taken place in the CTESS and the approach did not preclude future agreements. She added, however, that in order to deal with future agreements, a flexible outcome was needed that did not set down rigid requirements.

81. Responding to a comment about whether the approach outlined in the Australian submission was forward or backward looking, the representative said Australia's approach looked to the future, as outlined by Argentina. The representative noted the emphasis developing countries had placed on the importance of national coordination and exchanges of information and experience and how valuable those aspects would be to them in the future. In this regard, Australia considered that being too prescriptive in an outcome from the CTESS would not help Members in the future and would go beyond the mandate. In response to a separate question, the representative clarified that the Australian proposal envisaged a report as an outcome under Paragraph 31(i). She added that it was further envisaged that the report would contain recommendations for future work; on this aspect, Australia was open to further discussions and views.

82. With respect to the intervention by the EC, the representative said Australia was not suggesting that MEAs were not an important body of international law. Australia believed it was very important to reflect the mutual supportiveness between WTO rules and MEAs but not any hierarchy or differential relationship. The representative added that it was important that the checks and balances that had been agreed in the WTO should continue to be available and maintained so that environmental measures put in place by WTO Members could be challenged on the basis of trade disciplines. On another aspect raised by the EC, the representative said Australia had no problem with WTO panels and the Appellate Body seeking expert advice. This occurred already and was permissible under the DSU. Furthermore, those bodies had shown capacity to balance the various expert opinions they had sought in coming to a ruling. However, Australia could not accept the suggestion that in seeking expert opinions, the panels and Appellate Body should defer to one source of opinion over another.

83. Referring to the intervention by New Zealand, the representative said Australia looked forward to learning more about ideas on voluntary bilateral consultations. Finally, noting that many delegations had provided preliminary comments, the representative said Australia would welcome further views once Members had had opportunity to consider its submission in more detail.

II. PARAGRAPH 31(II): INFORMATION EXCHANGE AND CRITERIA FOR GRANTING OBSERVER STATUS

84. The representative of Canada introduced document TN/TE/W/71, which was also co-sponsored by New Zealand. This paper was a further reiteration of a Canadian non-paper[12] presented at an informal meeting held on 30 March 2007 and took into account comments made by delegations at that meeting. The submission also built on the points raised in previous paragraph 31(ii) submissions by the EC, US and Switzerland, as well as input from the Secretariat's synthesis paper (JOB(07)/2); it was submitted with a view to advancing the negotiations. The paper suggested that broad agreement had been achieved among Members on key elements of the paragraph 31(ii) mandate, namely that procedures for information exchange between MEA secretariats and WTO bodies should become a formal, institutionalized feature of WTO's work; and that flexible criteria should be advanced to facilitate the granting of observer status to MEAs in WTO bodies.

85. Canada welcomed the suggestions put forward by the EC, US and Switzerland on procedures for information exchange between MEA secretariats and the WTO; it believed that such procedures should be flexible and not overly detailed. Information sessions held on an annual basis should form the central feature of regular information exchange with MEAs. These information sessions could be organized by the CTE in concert with other WTO bodies according to the subject matter or theme chosen in a given year.

[12] JOB(07)/38.

86. It was Canada's view that information exchange should promote mutual supportiveness of trade and environment, and improved coherence nationally and internationally. Bringing together trade and environment officials in a coordinated fashion through information exchange and events would help in developing a more integrated approach at the domestic level. These information sessions should seek to attract the broadest possible representation from within WTO bodies and among MEAs relevant to the topic identified. Moreover, it would be important to draw upon the expertise within UNEP and other UN agencies involved in trade and environment issues.

87. Key elements for procedures for information exchange were outlined in the proposal. For instance, information sessions should be regular events, perhaps held once a year and their timing should be coordinated with other meetings as appropriate. The topics should be decided by the CTE in consultation with relevant WTO bodies and MEAs. Between sessions, there would be an ongoing document exchange by means of the internet to enhance information exchange between the various bodies. Other mechanisms for collaboration should be considered and included in the proposed procedures and tested on an ongoing basis, including ways and means of incorporating technical assistance activities and capacity building elements to help developing country Members foster their own internal, national trade and environment coordination processes.

88. With regard to criteria for the granting of observer status to MEAs, the co-sponsors believed that this could encourage cooperation at the international level, in addition to complementing and facilitating national level coordination between trade and environment officials.

89. The representative recalled that at the informal meeting in March, discussions had been held on a proposal to develop indicative questions to assist decision-making on granting observership, and their relationship to criteria. This recommendation had underscored broad support for a flexible approach to the decision-making process. Canada and New Zealand viewed indicative questions as complementary to the concept of criteria. Ministers had directed the CTESS to develop criteria to grant observer status; the word "criteria" was defined in the Concise Oxford English Dictionary as "a principle or standard by which something may be judged or decided."

90. Canada agreed that a flexible approach was required for granting observer status to MEAs, and that criteria should not be so inflexible as to make it more difficult than it currently was for an MEA secretariat to gain observership to a relevant WTO body. The approach should be flexible enough to allow new MEAs to apply for observer status in the future.

91. Canada noted that Annex 3 of the Rules of Procedure for the Session of the Ministerial Conference and Meetings of the General Council (WT/L/161) should guide and inform the discussions in developing criteria to grant observer status to relevant MEA secretariats. Using Annex 3 as a point of departure, the following non-exhaustive set of criteria had been proposed to assist WTO bodies in making reasoned decisions regarding applications for MEA observer status: (i) on relevance, is the MEA’s work relevant to the WTO body's work and vice-versa? (ii) on observer elsewhere, is the MEA currently an observer to other WTO bodies? (iii) on representativeness, does the MEA reflect broad membership of the WTO? and (iv) on reciprocity, will there be a reciprocal relationship between the MEA and the WTO body with respect to access to proceedings, documents, and other aspects of the observer status?

92. The representative said that these criteria and indicative questions were by no means exhaustive, and should be augmented, as appropriate, by the WTO body that was approached by an MEA for observer status. Furthermore, from a procedural point of view, the following elements should also be considered: (i) the decision to grant observer status should be made on the basis of a written request and on a case-by-case basis for each request; (ii) decisions on granting observer status to MEAs in relevant WTO committees should fall to the relevant committee; and (iii) observer status should be granted upon condition of full reciprocity.

93. In conclusion, it was recommended that the Chairman indicate in his next report to the Trade Negotiations Committee (TNC) that convergence was near on this item, and that the CTESS would welcome input from other WTO bodies, as appropriate, on specific points of agreement to date. With respect to the question raised in recent discussions about how to put into practice any agreement achieved in this area, Canada noted that it welcomed suggestions from Members, and was prepared to adjust the proposal in light of these suggestions in order to meet the collective desire of the membership to fulfil this part of the mandate.

94. The representative of New Zealand said that the proposal in TN/TE/W/71 had a clear practical purpose. It had been designed to draw together the exchanges and submissions under this mandate, and to identify both the nature and the extent of possible convergence on all of the main elements contained in paragraph 31(ii) mandate. With regard to information exchange, New Zealand believed that there was a broad agreement on the way forward; there was also a good sense of convergence on the issue of criteria for the granting of observer status. The paper had tried to distil key criteria that might be used, supplementing these with indicative questions that might be useful; the paper also suggested that criteria be flexible and non prescriptive. New Zealand was ready to undertake the necessary work with other Members to implement any of the suggestions contained in the paper.

Information Exchange

95. The representative of Thailand, also speaking on behalf of Malaysia, Indonesia, Philippines and Brunei Darussalam welcomed the new submission from Canada and New Zealand, which it believed would initiate useful discussions on points raised regarding the non-paper previously submitted by Canada.[13] With regard to information exchange, the paper presented a practical way forward. Thailand supported some of the views expressed, e.g. that procedures should be kept flexible and practical; that there should be early coordination between WTO and MEA secretariats on the organization of joint events and information sessions; and that transparency should be improved through various information exchange processes between the WTO and MEA secretariats.

96. The representative noted that paragraph 6(i) of TN/TE/W/71 contained an important element regarding technical assistance and capacity building activities to help developing countries enhance their respective trade and environment coordination processes; Thailand asked for further detail on this point. Moreover, Thailand sought further clarification on information and document exchange procedures between WTO and MEA secretariats as regards to WTO Members that were not parties or signatories to an MEA; in particular, Thailand asked whether this Member could have access to the official documents produced by that particular MEA as a result of these procedures.

97. The representative of Egypt thanked Canada and New Zealand for the paper, which built on previous submissions by the EC, US and Switzerland. In the past, Egypt had expressed the view that procedures for information exchange should not be too prescriptive, and that they should be flexible. He noted that Members should be in a position to assess the utility of information exchange and to consider how to conduct this exchange in future. Egypt would not support a higher level of institutionalization of the information exchange process, but would encourage information exchange sessions that would lead to better information flow between the WTO and MEAs. Members would need to assess the value-added of the information exchange before conducting further work to establish procedures.

98. The representative welcomed the capacity building component in TN/TE/W/71, and recalled that this point had been raised also in a previous US submission. Egypt believed that national coordination was important with regard to the quality of the information that would be exchanged.

[13] JOB(07)/38.

In the case of developing country Members, there was a need to come to speed with the rest of the membership in national coordination capacity and the possibility of contributing to the information exchange. Like Thailand, Egypt sought clarification regarding document exchange as regards to Members that were not parties to certain MEAs.

99. With respect to the use of the internet as an instrument to enhance information exchange, Egypt believed that further detailed discussion was needed, particularly considering the existing WTO's IT facility and the considerable amount of information already available. Egypt was open to further discussions on these questions, following a holistic approach to the various parts of the mandate, and in particular in light of the important linkage between paragraphs 31(ii) and 31(i).

100. The representative of China thanked Canada and New Zealand for their new submission, and also the US, EC, Switzerland and the Secretariat for earlier papers on paragraph 31(ii). China believed that the document built on these previous papers and included useful elements for future work. His delegation supported the general proposals regarding information exchange. However, as some other delegations had pointed out, China had concerns regarding the use of the words "formal, institutionalized feature" of CTE's work. China noted that it could agree with the wording in paragraph 6 of TN/TE/W/71 to establish procedures for information exchange between the WTO and MEAs. The mandate called upon Members to negotiate procedures for regular information exchange between MEA secretariats and WTO bodies, not to decide the status of the information exchange. Moreover, the purpose of the negotiations was to make existing information exchange more effective. China believed that information exchange was extremely important, and should become a regular feature of WTO's work.

101. The representative noted that technical assistance activities and capacity building had been mentioned in paragraph 6(i) of the paper, and believed that this element should be highlighted in the context of MEA information exchange sessions, taking into account the concerns of developing countries.

102. The representative of Australia welcomed the paper put forward by New Zealand and Canada, which built on previous submissions by the US, EC and Switzerland. Australia believed that this new submission provided a concrete basis for reaching agreement on this part of the mandate. It was important that the CTESS took the opportunity to reach an outcome on this issue, since it would establish the mechanics for achieving outcomes in other elements of the mandate. Australia remained flexible regarding procedures for information exchange, and believed that such processes needed to be effective and adaptable to ensure that they would remain relevant and useful.

103. The representative of Mexico thanked Canada and New Zealand for the proposals which captured several of the elements brought forward previously by other Members. She noted that Mexico had some reservations with regard to paragraph 16 of the document which referred to the Chairman's report to the TNC.

104. On information exchange, Mexico agreed with the point made by Canada, New Zealand and other Members regarding flexibility in the procedures. Referring to paragraph 6(b), Mexico raised a concern regarding the frequency and possible automaticity that could result from the stock-taking exercise. With regard to paragraph 6(c), which suggested that "procedures should be flexible enough to allow for participation by other organizations or groups as appropriate", Mexico sought further clarification on the difference between the words "organizations" and "groups", as well as on the meaning of the words "as appropriate" in this context. Mexico was open to further discussion with a view to achieving a result on these questions.

105. The representative of Colombia thanked Canada and New Zealand for the paper, which provided a good basis for the CTESS to continue its discussions. The representative suggested that

the proposals made in TN/TE/W/71 and the submissions from EC, US and Switzerland should be compiled in a single paper. With respect to paragraph 6(i) of the document, Colombia believed that the question of technical assistance should be given greater emphasis; in particular, it could become a standing item on the agenda of MEA information sessions.

106. The representative of Argentina thanked Canada and New Zealand for the submission, which took into account comments made in previous paragraph 31(ii) discussions. The representative also welcomed Canada's introductory statement, which had specifically addressed some of the issues Argentina had raised in previous discussions. Argentina's comments took into account the fact that the Committee was discussing elements proposed for information exchange and was not yet working on the basis of a legal text.

107. Argentina emphasized that the CTESS was working solely within the area of competence of the CTE; therefore, the final text should not be prescriptive on other WTO bodies. This did not preclude the possibility for the CTE to organize joint MEA information sessions with other bodies or to otherwise collaborate with other bodies in the identification of topics for the information exchange. However, it was for the membership - either in the CTE or in other bodies - to take decisions on these issues. At the appropriate time, the Committee would need to be more specific with respect to the actual language used; for the time being, his delegation considered that the paper was useful.

108. Finally, with respect to paragraph 16, Argentina agreed with Mexico that it would be premature for the Chairman to indicate in his next report to the TNC that Members were near convergence on this item.

109. The representative of the European Communities thanked Canada and New Zealand for their effort which took the Committee one step further towards finding common ground on the mandate. It was the EC's view that the negotiation on information exchange was near convergence. The EC had little to add with respect to the elements proposed, but emphasized the need to avoid overly detailed or prescriptive procedures.

110. The EC supported the proposal that information exchange should become a formal, institutionalized aspect of the CTE's work. The EC also supported the stocktaking mechanism proposed by Canada and New Zealand. The representative recalled that China had raised concerns with regard to the use of the words "formal or institutionalized feature of CTE's work", and preferred the word "regular". The EC would reflect further on this point, but did not believe that it would be a particularly difficult issue to resolve.

111. The representative of Chinese Taipei said that his delegation believed that improving cooperation between WTO bodies and MEA secretariats through information exchange and observer status could contribute to the important objective of enhancing mutual supportiveness of trade and the environment. The representative noted that there was a high degree of convergence in Members' views, as summarized in the proposal. This convergence should be used as the basis for further intensified work.

112. It was important that WTO be able to discuss environmental issues to ensure the mutual supportiveness of trade and the environment; information exchange was crucial in facilitating this work. However, she noted that both the WTO and the MEAs needed to ensure that the information exchanged truly reflected the proponents of original WTO documents in their entirety and integrity. Any information exchange or technical assistance should be inclusive and available to all WTO Members, including Members that were not parties to MEAs, so as not to prejudice the rights and obligations of any WTO Member or any MEA signatory.

113. The representative of India welcomed the effort by Canada and New Zealand to further this aspect of the Doha mandate building on earlier submissions. India agreed with the suggestions regarding the frequency and the means of information exchange. India believed that this was a good way to advance the mandate on information exchange between MEAs and WTO bodies. However, India shared the view of other delegations with regard to paragraph 16 of the proposal. While the Chair could communicate to the TNC the nature and progress of the discussions, it would be premature to suggest that the negotiations were "near convergence".

114. The representative of Ecuador thanked Canada and New Zealand for document TN/TE/W/71, as well as the US, EC and Switzerland for their previous input. Ecuador believed that within the framework of this mandate, regular exchange of information was important and useful; it should be carried out with flexible procedures and mechanisms to ensure the participation of MEA secretariats. Information exchange carried out through events, seminars and workshops could be organized by the WTO secretariat in coordination with relevant WTO committees and MEAs with the objective of strengthening the mutual supportiveness of trade and environment, which was the underlying objective of the mandate. If Members so agreed, representatives of the UNEP and other UN agencies, such as UNCTAD, could also be invited.

115. Ecuador believed that the key elements of the proposals relating to information exchange were acceptable; however, giving a formal or institutional dimension to the information exchange could actually affect the operation and effectiveness of the information exchange. Regarding paragraph 6(i), Ecuador noted that mechanisms for collaboration, including technical assistance, could assist developing countries to better fulfil their environmental commitments and to play a more active participatory role. Finally, Ecuador emphasized the linkage between the mandate in paragraphs 31(i) and 31(ii) of the Doha Declaration.

116. The representative of Switzerland thanked Canada and New Zealand for their effort to convert the non-paper[14] into a formal submission with a view to advancing CTESS discussions under paragraph 31(ii). The proposal usefully built on the formal proposals made to date. It showed that there was wide agreement on the issues of information exchange and observer status, and that Members' deliberations under this mandate were near convergence.

117. With respect to information exchange, Switzerland believed no further elaboration of its position was necessary, since it had made its points at length on previous occasions. In general, Switzerland concurred with the approaches proposed that information exchange sessions needed to become a formal and institutionalized feature of WTO's work. Switzerland also agreed that procedures should not be overly detailed and should be flexible so as to avoid putting additional burden on the secretariats involved, as well as on WTO Members and MEA Parties. Switzerland supported efforts in achieving agreement in this area of the mandate.

118. The representative of the United States thanked Canada and New Zealand for their paper. The US supported many, if not all, of the ideas outlined in TN/TE/W/71; in fact, most of them reflected ideas which the US had put forward in its earlier paper.[15] Referring to a point raised by several delegations on procedures for information exchange between MEAs and the WTO secretariats, the representative clarified that what the US had proposed was merely to agree on a general structure for this information exchange. It was the US' view that the wording contained in the mandate, i.e. "regular information exchange between MEA secretariats and the relevant WTO committees", did not mean that every WTO committee would need to hold annual information exchange sessions or to follow a set of procedures that the CTESS might choose to outline. Rather, as it had been the practice

[14] JOB(07)/38.
[15] TN/TE/W/70.

in the CTE, the WTO Secretariat could organize the information sessions and liaise with WTO bodies as appropriate.

119. Moreover, any information from the MEAs could be communicated to relevant WTO bodies. Likewise, information received by delegations could also be shared among delegations or with colleagues in other WTO bodies. There was no intention to create a series of procedures for the various committees, but rather to agree on a general structure for information sharing.

120. The representative of Brazil said that the paper was useful to move the CTESS work forward on this less controversial item of the agenda. On regularization of information exchange sessions, Brazil had doubts as to whether annual sessions would be sufficient to deal with all the pertinent issues related to the work of MEAs. Brazil proposed to hold these sessions twice a year, given the considerable amount of information that MEAs could provide. In Brazil's view, once procedures would be created and the expertise established, it would not be more burdensome to hold two sessions a year.

121. Referring to paragraph 6(c) of the proposal regarding the kind of information presented by MEA secretariats, the representative noted that there could be cases where views would differ between the secretariat of an MEA and the Parties to that MEA.

122. The representative of Japan thanked New Zealand and Canada for their paper. Japan's position had been explained in previous meetings, and those points had been well reflected in TN/TE/W/71. Therefore, Japan generally supported the proposals contained in this new submission.

123. The representative of Canada said with regard to the comments made on the use of the word "regularize" as opposed to "formalize" or "institutionalize" that the issue could be further discussed; Canada did not believe that this question would create particular difficulties among Members.

124. The representative took note of the points made on paragraph 6(i), and said that technical assistance could be further emphasized in the procedures. Various questions had been raised in this regard and there seemed to be an interest in addressing them; these could, for instance, be discussed further at a particular information session with MEAs.

125. Regarding document exchange, and whether these would be made available to non-parties to an MEA, Canada noted that the documents made available to Members would be essentially non restricted or de-restricted documents already available in the public domain. In this regard, he noted that the internet could provide a user-friendly format to consolidate or make links to the various papers.

126. In response to the question by Mexico regarding paragraph 6(c) of the proposal, relating to participation by other organizations or groups, the representative clarified that the organizations should be international organizations. The proposal sought to provide a flexible approach whereby these organizations would be invited, as appropriate, depending on the particular theme selected in a given year.

127. Finally, with respect to paragraph 16 and the state-of-play of paragraph 31(ii) negotiations, he noted that it would be a matter for the Chairman to decide when reporting to the next TNC.

Observer Status

128. The representative of Japan recalled that the US had proposed in a previous submission[16], that in the event a decision could not be arrived at with respect to a particular, yet relevant, MEA request, WTO bodies be encouraged to invite the relevant MEA to participate as an observer on an ad hoc basis. Japan asked whether there was any particular reason for not having included this suggestion in document TN/TE/W/71.

129. The representative of Thailand, also speaking on behalf of Malaysia, Indonesia, Philippines and Brunei Darussalam, noted that the proposal in Paragraph 15 that certain MEAs be granted automatic observer status in the CTESS for the remainder of the DDA negotiations was not within the mandate. The negotiations under Paragraph 31(ii) should focus on developing criteria for the granting of observer status to MEAs.

130. The representative of Chile said that his delegation broadly supported the elements outlined in the submission by Canada and New Zealand on the issue of observer status. With respect to the second criteria proposed in paragraph 10 of the document, on whether the MEA was an observer elsewhere, Chile noted that if an organization was granted observer status in one WTO body, it should be given automatic access to other bodies, without having to submit any additional request.

131. Chile asked where the burden of proof lied in the examination of MEA requests for observer status, i.e. whether it would be for the MEA to establish that it met the relevant criteria, or for any Member objecting to a request to establish that an MEA did not meet the criteria. This question depended on whether Members wished to facilitate or not the granting of observer status for MEAs. Chile also requested the co-sponsors to clarify whether there was any difference between the criteria of reciprocity in Paragraph 10(d), and Paragraph 12(c), where reciprocity appeared to be a condition rather than a criterion. It was Chile's understanding that observer status would be granted under the conditions of reciprocity; this problem, however, could be of a semantic nature.

132. Finally, with regard to Paragraph 16 of the proposal, Chile agreed with the point made by Canada that the TNC should be informed of the state of the discussions; if progress had been made, this should be reflected in the Chair's report.

133. The representative of Norway welcomed the submission by Canada and New Zealand, which it considered as a constructive step forward to find a solution to the mandate. Norway believed that criteria or indicative questions should not be too restrictive or inflexible, so as to enhance the mutual supportiveness of trade and environment. The criteria of relevance, observer elsewhere and reciprocity seemed appropriate. However, with regard to the criteria of representativeness, Norway was of the view that even if the membership of an MEA did not fully correspond to that of WTO, it could still be of interest for WTO to be informed of relevant developments within that MEA. She noted that this criteria would need to be further refined. Norway also shared the view that decisions on the granting of observer status to MEAs in relevant WTO committees should fall to the relevant committee, as suggested in Paragraph 12(c) of the proposal. In addition, Norway supported the proposal that MEAs, as well as UNEP, be granted observer status for the remainder of the negotiations in the CTESS.

134. The representative of the European Communities said that the criteria proposed were not problematic, but that there were some questions regarding their application. With respect to the criteria of relevance in Paragraph 10(a) of the proposal, the EC noted that the language should be consistent with that of Annex 3 of the Rules of Procedure, which provided that "requests for observer

[16] TN/TE/W/70.

status shall accordingly be considered from organizations which have competence and a direct interest in trade policy matters".[17]

135. Regarding the criteria of "observer elsewhere", the EC reiterated that there should be scope for new MEAs that would not be observer in other bodies. The EC emphasized that the guiding principle for any of the criteria was that they should not make it more difficult than was already the case for MEAs to obtain observership.

136. The EC recalled its own proposal that criteria should be deemed fulfilled for the MEAs that had take part in the work of the CTE. Regarding the comments made on Paragraph 12(b) that the granting of observer status to MEAs in relevant WTO Committees should fall to the relevant Committee, he noted that if the relevant Committee would adopt these criteria, it would also be able to take a decision to deem these criteria fulfilled in certain respects.

137. Finally, the EC supported the proposal in paragraph 16 of TN/TE/W/71 that the Chairman indicate in his report to the TNC the degree of convergence emerging from the discussions.

138. The representative of Egypt recalled that the mandate called upon Members to agree on criteria for granting observer status, and did not provide scope for automatic granting of observer status to MEAs. Criteria should be applied in a consistent manner and should not be left to too many interpretations. Egypt's position in this regard had been clearly stated in other WTO bodies, including the General Council. Moreover, Egypt disagreed with the suggestions made by some Members to grant MEA ad hoc invitees observer status in the CTESS for the remainder of the negotiations. The question of consistency in the application of criteria was of particular importance to his delegation, and for the credibility of the process in WTO.

139. The representative of Argentina was of the view that instead of focusing on whether criteria would facilitate or hinder MEA observer status, Members should focus on establishing reasonable criteria to guide WTO bodies in making a decision on observer status. Argentina had made comments in previous discussions on the formulation of criteria. His delegation welcomed the fact that the criteria proposed by Canada and New Zealand were formulated in a positive manner. He noted that while a list of indicative questions could be useful, it could not be a substitute for positively phrased criteria. Argentina supported the view that the list of criteria should be non-exhaustive and allow for the consideration of additional criteria by relevant WTO committees. Moreover, Argentina understood the criteria to be cumulative and not alternative.

140. Regarding the criterion in paragraph 10(b), Argentina expressed the view that there should not be any automaticity related to the fact that an MEA was already an observer in another WTO body. The competence and interest of an MEA had to be assessed in respect of the work of each body. With respect to the question raised by Chile on the burden of proof, the point had been clarified in paragraph 12 of the proposal: the MEA should submit its request to the WTO body in which it was interested to obtain observer status, provide the necessary information for the WTO body to assess its compliance with the criteria, and on this basis, the competent body would then decide on whether or not to grant observer status to the MEA.

141. The representative of China supported the idea in Paragraph 3 of the proposal that flexible criteria should be advanced to facilitate the granting of observer status in WTO bodies. While China agreed with the main thrust of the paragraph, it supported the view expressed by other delegations that there was no question of making criteria more lenient, stringent or flexible. Criteria simply needed to be formulated in a clear, transparent, and pragmatic manner with the objective of enhancing the mutual supportiveness of trade and environment.

[17] WT/L/161, Paragraph 2 of Annex 3.

142. The representative of the United States appreciated the fact that the submission by Canada and New Zealand built on previous ideas proposed. The US reiterated its proposal that in the event a decision could not be arrived at on a particular request, WTO bodies should be encouraged to consider granting observership to the MEA on an ad hoc basis; in the US' view, this offered a pragmatic and useful approach, particularly in the current situation regarding observership in the WTO. The US was flexible with regard to the formulation of criteria or indicative questions to guide the consideration of MEA requests.

143. The US noted that many of the points contained in paragraphs 10 and 12 of the proposal were already covered in Annex 3 of the Rules of Procedure. The US therefore wondered whether Canada and New Zealand intended anything different from what was called for in Annex 3, or whether they had tried to capture the main aspects contained in Annex 3. In the US' view, Annex 3 should serve as the point of departure; any additional criteria or indicative question would inform a Committee's thinking on whether or not a particular MEA met the general criteria of competence and direct interest set out in Annex 3.

144. On the issue of automaticity suggested by the EC, the United States asked the EC to clarify whether the granting of observer status would be done by the WTO body following an examination of MEA observer requests in light of criteria or indicative questions to be agreed, or whether the requests would automatically be granted for a certain list of MEA secretariats regardless of the discussion of criteria or the answers to the indicative questions. While the US believed that criteria or indicative questions should not make it more difficult for the MEAs to get observership in relevant WTO bodies, it also considered that WTO bodies should be allowed to make the final decision on who receives observer status in their Committee.

145. The representative of Brazil noted that a non exhaustive list of criteria could lead to a lack of transparency and predictability, as it meant that different criteria could be applied to different MEA requests. She noted that criteria needed to be applied in a uniform manner, i.e. in a way that did not create further difficulties for the MEA to obtain observer status in a particular body. There was also the question of how to deal with an MEA request in cases where the MEA did not meet all of the criteria. Brazil believed that a negative answer to one of the questions should not preclude the MEA from participating in the work of a WTO body. Moreover, Brazil agreed that the criteria of competence and direct interest should serve as a point of departure, as these criteria were broader than the four criteria set out in paragraph 10 of the proposal. She noted that flexibility was a key issue, given that the objective was to promote the participation of the MEAs in WTO bodies. In this regard, Brazil believed that shifting the burden of proof to the MEAs would not facilitate their participation.

146. The representative of Colombia said that his delegation agreed that criteria should be flexible and non exhaustive. The criteria should serve as guidance for the relevant committees in their consideration of MEA requests for observer status, and should not limit their ability to take decisions in this regard. Furthermore, flexible criteria could promote a dynamic relationship between environmental bodies and WTO committees. His delegation also believed that indicative questions could be a useful instrument for WTO bodies in their examination of observership requests, provided these were only indicative and non exhaustive. Colombia agreed that observer status should be granted to the MEAs that had a longstanding history of collaboration with the WTO. However, the representative noted that the final decision regarding the granting of observer status should be left to each committee on the basis of the criteria to be agreed.

147. The representative of Mexico said that her delegation was in favour of MEAs participating as ad hoc invitees in the work of the CTESS. With regard to the proposal by Canada and New Zealand, Mexico noted that it was important to find the right balance between, on the one hand, adopting flexible criteria that would not be restrictive for MEA observership, and on the other hand, not limiting the capacity of Members to make decisions with regard to observer status. Mexico was still

analyzing the proposal in paragraph 15 to grant observer status to MEA ad hoc invitees for the remainder of the negotiations in the CTESS. As other delegations, Mexico believed that the proposal to automatically grant observer status to certain MEAs was outside the mandate and represented an additional concession for delegations. Her delegation however remained open to finding a solution to this question.

148. The representative of Ecuador considered that the criteria for granting observer status should be flexible and ensure transparency and predictability. She noted that given the mandate, indicative questions could serve as a complement to the criteria, but should not replace the adoption of criteria. Her delegation also believed that it was for each WTO body to decide whether an MEA had competence and direct interest in the work of that particular body.

149. Ecuador was still considering the criteria proposed, but had already some questions regarding the concept of reciprocity in paragraphs 10(d) and 12(c), where it was suggested that observer status would be granted upon condition of full reciprocity. Ecuador asked Canada and New Zealand to further elaborate on this point, particularly since it was also being suggested that criteria should somehow facilitate the participation of MEAs as observers.

150. Ecuador believed that paragraphs 13, 14 and 15 exceeded the mandate in paragraph 31(ii), which was to establish criteria for the granting of observer status. Regarding the proposal in paragraph 16, Ecuador noted it would be important to reflect the state of play in the negotiations as a whole, and not only the positive results or possible convergence under paragraph 31(ii).

151. The representative of Canada appreciated the comments made by other delegations on document TN/TE/W/71. On the issue of application of criteria, as suggested by Egypt and others, Canada agreed on the need to find the right balance. His delegation had proposed a non exhaustive set of criteria to provide the necessary flexibility to WTO bodies. The representative was of the view that criteria had to be flexible enough to adapt to the particular body considering a request for observership. In addition, Canada agreed that a flexible and pragmatic approach had to be followed when applying the criteria, as China had suggested.

152. Canada echoed the question posed by the US to the EC regarding its proposal for automatically granting observer status to certain MEAs in the CTE. The submission by Canada and New Zealand recognized that the MEAs listed in paragraph 13 were likely to fulfil the criteria to be accorded observer status. However, the paper also noted that it would still be appropriate for WTO bodies to make decisions on participation following receipt of a written request by the MEA interested in being granted observer status.

153. The representative of Canada pointed out that the suggestion by Argentina to rephrase some of the indicative questions in a positive manner was a useful one. Canada also welcomed the EC's suggestion that instead of asking if the MEA was an observer elsewhere, it could be asked whether there was scope for cooperation between the MEA and the WTO body. Regarding the point on duplication between the criteria identified in TN/TE/W/71 and those contained in Annex 3, Canada noted that the former were intended to complement the latter. Moreover, he noted that there was no specific reason for reiterating in the proposal some of the elements contained in Annex 3, except to highlight that these were key aspects, especially with respect to the issue of reciprocity. On the issue of observer status being granted to MEAs in one body and extended automatically in other bodies, Canada noted that Annex 3 clearly established that the granting of observer status in one body did not and should not automatically lead to observer status in another body. In this regard, Canada supported the view expressed by other delegations that the decision should not be taken away from WTO bodies.

154. Finally, his delegation supported the suggestion by the US that in the event a decision could not be reached with respect to a particular MEA request, WTO bodies should be encouraged to invite the MEA on an ad hoc basis.

155. The representative of the European Communities noted that in the EC's perspective, automaticity did not mean that once an MEA was granted observership in a particular committee, it therefore had an automatic right to observership in other WTO committees; nor did it mean that the MEAs listed in paragraph 13 of the submission by Canada and New Zealand should have an automatic right to observership in all WTO committees. What the EC had suggested was that "core MEAs", namely those that had taken part in information exchange sessions, should be granted observership in the CTE.

156. The EC could go along with the criteria and indicative questions proposed, provided these did not make observership more difficult for MEAs. Therefore, in respect of the MEAs listed in paragraph 13 of the proposal, the EC considered that these particular criteria or questions should be deemed fulfilled in the case of these selected MEAs and in respect of the CTE only. Regarding Paragraph 12 of the proposal, the EC agreed that it would not make sense for automaticity to apply with respect to the selected MEAs in the absence of a written request. The EC agreed with the point made in paragraph 12(b) that decisions on the granting of observer status to MEAs in relevant WTO committees should fall to the relevant committee. However, the CTE in Special Session could take that decision with regard to the CTE in Regular Session; the EC was not suggesting that the CTESS could take such a decision in respect of other bodies than the CTE.

157. The Chairman thanked Canada and New Zealand for their new submission, as well as other delegations that had made earlier contributions under Paragraph 31(ii). Discussions were moving towards convergence on many of the ideas put forward. It seemed that the clarifications that had been sought and the few points made by delegations in respect of the most recent proposal could be addressed as the committee proceeded with its work.

158. On the information exchange part of the mandate, the elements of an outcome had been identified. On observer status, the Chairman was also of the view that the basic elements were on the table; the mandate in Paragraph 31(ii) called upon Members to negotiate criteria for the granting of observer status and Members had made useful proposals in this regard. However, the Chairman noticed that certain elements of the proposals by Members did not generate consensus at that stage. Those elements should not prevent the Committee from moving forward. The Chair believed that the time had come for the Committee to consider how the various proposals that were considered as acceptable could be brought together in a text.

III. PARAGRAPH 31(III): ENVIRONMENTAL GOODS AND SERVICES

159. The Chairman noted that a non-paper had been submitted under this agenda item by a group of countries, namely: Canada, the European Communities, Japan, Korea, New Zealand, Norway, Chinese Taipei, Switzerland, and the United States. The non-paper, circulated in document Job(07)/54, was entitled "Continued Work under Paragraph 31(iii) of the Doha Ministerial Declaration".

160. The representative of New Zealand said that the non-paper was intended to contribute further to the intensification of the negotiations on environmental goods and to gather momentum. The non-paper was co-sponsored by a number of Members including Members that had proposed specific environmental goods. Because of the late submission of the non-paper, the representative of New Zealand acknowledged that Members only had a limited time to reflect on its content and therefore would only be in a position to offer initial views. He expected however to have a more detailed and

substantive exchange at the next formal meeting, in particular on specific items, their customs workability and their environmental benefits.

161. The non-paper had three inter-related components: (i) a set of carefully selected items which offered the potential for a high degree of convergence among Members; (ii) a part on special and differential (S&D) treatment; and (iii) a part on the review mechanism.

162. First, on the selection of items, the annex to the paper contained the HS descriptions of 153 environmental goods along with an updated identification of each product's environmental benefits. These items were all chosen from the original Secretariat's compilation list, which contained some 480 products. Therefore, the selection of items represented a sharp narrowing of the scope of the negotiations, by nearly 70 per cent. The items had been selected by taking careful note of all technical and information exchanges that had taken place to date.

163. Over the past eight months, New Zealand and many of the other co-sponsors had engaged in intensive bilateral and plurilateral discussions with other Members on particular items. In the case of New Zealand, the selection process had been further informed by extensive consultations with domestic stakeholders including from the private and non-governmental sectors. As indicated in Paragraph 3 of the non-paper, the co-sponsors had considered each item in the compilation document on the basis of its importance for the environment, its customs workability and the prospect of a possible convergence on each item. The co-sponsors had used the selection process to update and clarify the environmental benefits of each item and to verify the HS descriptions of entries.

164. Concerning customs workability, a significant number of ex-outs had been revised and more precision about the products had been provided. In particular, the paper proposed that once the 6-digit HS code and the ex-out description of a product were agreed upon in the negotiations under Paragraph 31 (iii), implementation would be left to individual Members. For some items, it was also left to individual Members to make their own judgment as to the value and the utility of an ex-out. In such instances, ex-outs were identified as "optional". This would allow Members to decide whether to liberalize the entire 6-digit category for administrative simplicity or to liberalize the sub-category for a specific product through the ex-out at the 8- or 10-digit level. The optional nature of the ex-out was a recognition of some Members' concerns regarding the potentially high levels of administrative complexity and transaction costs of establishing and implementing "ex-outs" for a large number of products. The co-sponsors acknowledged that further work was needed to operationalize the ex-out in a manner that could work for traders and customs administrations and looked forward to more detailed discussions on this aspect.

165. The representative of New Zealand pointed out that many of the items that the co-sponsors had originally proposed were not included in this potential convergence set. For instance, more than half of the environmental goods originally proposed by New Zealand were not included in the non-paper. For New Zealand, this was the price to pay for progressing in the negotiations. The representative of New Zealand was of the view, however, that the goods originally proposed remained critical to ensuring positive environmental outcomes, including for instance, improving air or water quality, enhancing fuel efficiency or transport sustainability, or encouraging effective management of waste water treatment processes. These goods played a particularly central role in such processes because of their significant impact on the achievement of a range of international environmental and development goals, such as those contained in the WSSD or the Millennium Development Goals. Despite their clear role in addressing environmental problems, Paragraph 7 of the non-paper acknowledged that the items originally proposed might not necessarily secure a consensus at that point in time in the negotiations. These items had therefore not been included in the non-paper. New Zealand pointed out however that the failure to select these products might in the view of the wider Membership limit the scope of a development, trade or environmental outcome for these negotiations.

For this reason, New Zealand and the co-sponsors encouraged Members to propose additional items or to reintroduce others.

166. Second, co-sponsors were of the view that S&D treatment needed to be addressed in a meaningful manner in the negotiations. In this regard, New Zealand had co-sponsored the May 2006 proposal on modalities tabled in the CTESS and the NAMA Negotiating Group.[18] Paragraph 9 of the current non-paper recalled the flexibilities for developing country Members contained in that proposal. Co-sponsors looked forward to further engagement and specific suggestions on ways to implement S&D treatment.

167. Third, concerning the establishment of a review mechanism, the representative of New Zealand recalled that the OECD had estimated that half of the environmental goods likely to be in use within the coming decade did not currently exist. The negotiations in the CTESS further underlined that environmental goods were continually developing in new and often unexpected directions. It was therefore important to ensure that any agreed set of environmental goods did not remain static by periodically reviewing and updating the product coverage. The co-sponsors looked forward to further discussions on ways to implement this part of the proposal.

168. In conclusion, through the tabling of this potential convergence set, the co-sponsors substantively and significantly tightened the focus of the CTESS work. The changes were made with a view to encouraging the intensification of the work of the CTESS and the selected items were considered capable of offering the best prospect to move the process forward. The co-sponsors regarded this non-paper as a work in progress; this was not the end of the process but rather a new phase. The co-sponsors were taking the necessary steps to accelerate the negotiations under Paragraph 31(iii) and certainly hoped other Members would join them in that spirit. New Zealand stressed that the purpose of these negotiations and of the non-paper was to demonstrate the ability of the WTO to contribute to global sustainability.

169. The representative of Cuba indicated that she had not yet received inputs from capital on the non-paper. She noted that the document avoided repetitions contained in previous lists. Cuba also acknowledged that the section on S&D treatment showed that the efforts of developing country Members had borne fruit.

170. The representative of India thanked the proponents for the attempt to further the negotiations under this part of the mandate. His delegation recognized the efforts made in rationalizing the selection of products and indicating the environmental benefits. Moreover, the suggestion that this list was only a basis for negotiations was welcome. His delegation's understanding was that the environmental benefits indicated in the list were also negotiable.

171. While the non-paper improved the list approach, it did not entirely address the concerns that India and a number of other developing country Members had raised in the past. In particular, such an approach did not address the underlying objective of the mandate to improve the environment and promote sustainable development. India had carefully reviewed the revised list and noted that a number of products on the list had other uses than environmental ones, for instance entries n°175, 177, 244, 245, 249 and 279. India was of the view that the objective of the mandate would not be met unless the goods receiving tariff concessions were actually used for environmental purposes.

172. India disagreed with the premise in Paragraph 2 of the non-paper concerning previous technical discussions. During these discussions, India had repeatedly emphasized that the majority of goods that were being discussed had clear multiple uses and that this exercise did not help with the identification of single use environmental goods. India maintained that there were few environmental

[18] TN/TE/W/65.

goods as such and that goods became environmental only when they were used for environmental activities. The list approach did not ensure that goods which received tariff concessions would actually be used for improving the environment.

173. India had submitted earlier a proposal on the environmental project approach. His delegation was working on additional elements in an attempt to respond to concerns raised on India's proposal both in the CTESS and in bilateral discussions with the proponents of the present non-paper. These additional elements would be based on an agreement on environmental activities and importing entities, thereby retaining the link between tariff concessions and the environmental use of goods. Finally, India continued to believe that trying to agree on a single list without guaranteed environmental use only served to improve market access and did not fully achieve the objective of the Doha mandate.

174. The representative of Norway noted that all Members faced challenges with regard to the protection of the environment. By fulfilling the Doha mandate under Paragraph 31(iii), all Members had a chance to make a positive contribution to both the environment and economic development. Improving access to environmental goods would give an opportunity to governments and industry to meet environmental and development goals. The convergence list represented a major change and constructive step to move the negotiations forward. These aspects had prompted the Norwegian co-sponsorship.

175. Norway acknowledged that all approaches tabled by Members had merit. However, Norway was of the view that the list approach would contribute most constructively to fulfilling the mandate. Such an approach would create a more predictable result for exporters and importers and even more importantly, it would set up a predictable framework for businesses and industries in their planning for future investments and technologies. Environmentally beneficial products at a lower price would stimulate long term planning for more sustainable solutions. In the present list, considerable work had gone into eliminating products where multiple use was the problem. Co-sponsors of the list also provided ex-outs that gave a clearer environmental profile to the goods. Even though ex-outs might be further elaborated and clarified, Norway believed that the environmental credibility of the list had significantly improved.

176. Norway considered that the list was a basis for negotiations and looked forward to engagement from developing country Members. Norway called upon other Members to define and present their interests. In this regard, Members could use available expertise and other assistance as appropriate. In the negotiations, S&D treatment should play a central role and some thoughts on implementation were already included in the non-paper. Norway reiterated the importance of finding solutions and addressing the need for flexibility with regard to, *inter alia*, time period of implementation and exclusion of a limited number of products. For Norway, a review mechanism was necessary to update the list and avoid a situation where new improved products would be at a disadvantage with respect to competing products already benefiting from tariff reductions or eliminations. Norway looked forward to exchanging views on a possible review mechanism.

177. The representative of Colombia thanked the co-sponsors for this important proposal. However, Colombia pointed out that regardless of the approach, it was necessary to establish criteria for the identification of environmental goods. In this regard, Colombia drew the Committee's attention to its proposal contained in document Job(06)/149 which established some criteria for the identification of the final use of environmental goods. With regard to the identification of multiple environmental goods, the establishment of criteria was fundamental.

178. The representative of Egypt thanked the co-sponsors for their effort to present a common list given the divergence of interests covered in the previous individual lists. This effort of convergence, however, was limited to the proponents; for Egypt, it had only confirmed that many of the goods

presented in the individual lists were purely industrial goods that had nothing to do with the environment and did not pass the test of single environmental end use. For a number of Members, it also did not even pass the test of a clear environmental benefit. However, Egypt recognized the effort to take into account some of the concerns expressed by Members, including Egypt. For instance, the discussions on hazardous wastes had led to the removal of related products from the list, at least for the time being. However, the representative of Egypt had concerns regarding the possibility of reintroducing goods and the notion of a living list proposed in the non-paper.

179. Although the title of the non-paper referred to convergence, it did not converge towards other suggested ways of fulfilling the mandate as proposed by Colombia. Members were still struggling to find the right criteria and the proper way forward under Paragraph 31(iii). Other approaches on the table and other ideas needed to be considered in conjunction with the list approach. Egypt expected the discussion to go further and to look at the product coverage of the new list in light of other approaches that were on the table, in particular the Indian project approach, the Argentinean integrated approach and the Colombian ideas about criteria. Elimination or reduction of tariffs was only one part of the holistic mandate of the CTESS. Other areas also needed to be dealt with, namely non-tariff barriers (NTBs), technology transfer and S&D treatment. The non-paper contained a small part on S&D treatment which, in Egypt's view, fell short of the ambitions of the developing world in the CTESS discussion. Egypt believed that S&D treatment was complex and implied more that a different time period for developing country and least-developed country Members.

180. The representative of Ecuador thanked the co-sponsors for their work. She asked about the number of products that were covered in the 153 entries contained in the new list. Ecuador had requested a cleaning up exercise of the list to provide these negotiations with greater credibility: on one hand the present version of the list appeared to be a step forward; on the other hand, some uncertainty remained as additional products could still be reintroduced. Ecuador pointed out that other proposals and approaches introduced by developing country Members were still on the table. While Ecuador considered that the non-paper had the advantage of shortening the list, there were other inherent problems in the list that had not been resolved. With the list approach, Members only discussed tariff questions and did not deal with NTBs or S&D treatment for developing country Members. For the negotiations to achieve a balanced outcome for trade, it needed to offer something to all WTO Members and this could not be achieved by simply reducing tariffs. As already mentioned by Ecuador, the list approach raised other problems, including the lack of criteria to assess the environmental credentials of the goods.

181. The problem of dual or multiple uses of goods was inherent to a list approach. In most cases, the use of an environmental good in an environmental project would ensure that its final use be in favour of the environment. For Ecuador, this was the only valid criterion. Ecuador also disagreed that modalities that would apply to environmental goods should be channelled through an obligatory sectoral approach. In the NAMA negotiations, a voluntary and flexible parameter for developing country Members still needed to be defined; the NAMA Negotiating Group did not say that countries needed to eliminate their tariffs in the framework of S&D treatment.

182. Ecuador also disagreed with the establishment of a review mechanism to reflect technological innovations. This would be tantamount to signing a blank cheque and would be burdensome for many developing country Members. Many of these goods could be in competition with domestically produced goods which would thus be excluded from the market. Moreover, the issue of ex-out and the 6-digit level HS criterion were still rather unclear to Ecuador's delegation and would be a very cumbersome matter to deal with for customs authorities. The representative of Ecuador was of the view that there was a need to establish criteria and parameters to address the mandate as a whole and in this respect, Ecuador shared many of the points raised by India.

183. The representative of South Africa thanked the co-sponsors of document Job(07)/54 for their efforts. She noted that her delegation would need more time to review the products on the list. The work done on the ex-outs, environmental uses and HS codes would be useful even for the identification of products in the context of an environmental project. The representative of South Africa was puzzled by Paragraph 6 of the non-paper. In the name of administrative simplicity, South Africa could not accept the creation of large loopholes in which goods with no link to the environment would free-ride. In reply to Norway's point that many of the products with multiple uses had been removed, South Africa said this was not enough to solve the issue of multiple use. The non-paper proposed that the decision to liberalize at 6-digit level be entirely left to Members for reasons of administrative simplicity. In other words, this option seemed to be directed at developing country Members that had difficulty implementing or administering at ex-out level. Therefore, according to South Africa, not only would a loophole be created, but in all likelihood developing country Members would be the largest contributors. As proponents continued to insist that the modalities be discussed in the NAMA Negotiating Group, the representative of South Africa drew their attention to the principle of "less than full reciprocity". An advantage of a non-list approach remained that it did not raise issues related to market access negotiations.

184. For South Africa, a significant outcome of the CTESS negotiations would be that increased access to environmental goods and services facilitate the developments of environmental sectors in developing country Members. Under the scenarios envisaged in the non-paper, this was not going to happen as these scenarios seemed to undermine prospects for a win-win-win situation and might even create a lose-lose-lose situation. A list approach did nothing to address issues of technology transfer and would lead to a dependency on developed country Members for their products and technologies.

185. South Africa noted the call for further ideas on S&D treatment contained in Paragraph 9 and the point that much more was needed on S&D treatment. The only response to the call of Ministers in Doha that S&D be an integral element of all parts of the negotiations was a longer implementation period for some developing country Members and not even lower tariff rates. The CTDSS was addressing ways to strengthen existing S&D provisions by making them more precise, effective and operational. It would be incumbent upon the CTESS to use the same criteria when identifying S&D provisions in these negotiations. A problem inherent in the list approach was that the elimination of tariffs, especially at the 6-digit level, would amount to requiring developing country Members to give a blank cheque.

186. Finally, the representative of South Africa thanked Colombia for recalling its proposal submitted last year. At that time, South Africa appreciated the idea of using criteria as a means of identifying environmental goods and services within the context of a project. South Africa was still of the view that this was an idea worth pursuing and that could possibly move the process forward. In that respect, she asked the co-sponsors to provide more detail on the basis used to assess the importance of the products to the environment.

187. The representative of Mexico thanked the co-sponsors for their effort to shorten and reduce the list. Mexico supported many of the observations made by Ecuador, Colombia, India and South Africa. Mexico underlined in particular the statement made by Colombia concerning a document tabled in July 2006 on criteria. Like India, Mexico was of the view that unless the goods included on the list were being used for environmental purposes, the Doha mandate would not be fulfilled. Therefore, Mexico was ready to listen to good arguments and be convinced that the industrial goods included on the list by the co-sponsors were destined to environmental activities.

188. The representative of China thanked the co-sponsors for the non-paper; he also thanked India for its effort to search for an alternative approach to fulfil the Doha mandate. The non-paper prepared by the co-sponsors and India's approach could be the basis of the future work of the CTESS. He welcomed India's intention to submit a revised paper and believed that the Indian proposal was

attractive for at least three reasons. First, the Indian proposal would be more credible, predictable and transparent. Second, it would focus on environmental performance rather than environmental goods and services. Third, it might meet the actual concerns of many developing country Members in specific areas, such as air pollution control, water and waste water management, soil conservation; it also had the potential for convergence with the areas mentioned in the non-paper. The representative of China fully agreed with South Africa's comment on the triple-win objective and believed that, irrespective of the approach, the development element was a major issue that needed to be integrated into the final results of the negotiations on trade and environment. This was a major concern for China and included issues of S&D, transfer of technology and NTBs. China would make specific comments on the new proposal made by the co-sponsors at a later stage.

189. The representative of Malaysia, on behalf of Brunei, Indonesia, Malaysia, Philippines and Thailand, thanked the co-sponsors for their new submission on Paragraph 31(iii) and welcomed the suggestion to reflect the views of other Members in the discussions on environmental goods. As this was a recent submission, his delegation would need to review it further and come back with more substantive comments at a later date. In general, he considered the document as a welcome movement to bridge the divergence among Members on this issue. However, other approaches were still on the table including new or amended approaches that might be submitted by Members. Members needed to continue to carefully consider and remain open to all present and forthcoming proposals, and work together on reaching a consensus which would reflect elements of different approaches. Such a consensus would be most beneficial to all Members and the technical aspects of the negotiations would then be able to proceed. He expressed the readiness of his delegation to work with the Chairman, to actively engage with other Members to realise the objectives of the negotiations under Paragraph 31(iii) and underlined his delegation's commitment to finding a satisfactory and balanced outcome to this important mandate.

190. The representative of Nicaragua thanked the co-sponsors for their effort to reduce the number of products. However, as pointed out by South Africa, this process was not complete as some goods still raised questions concerning their multiple use and environmental benefits. Nicaragua would provide further comments once the new list was reviewed in capital. For Nicaragua, environmental goods and services needed to be selected in compliance with a clear sustainable development criteria and the link to the improvement of the environment had to be explicit. Moreover, for the mandate to be effective, it was crucial to take into account the life cycle perspective; in other words, the non-renewable or renewable source used in the production of an environmental good as well as its recycling or contamination potential were important elements to ensure a positive and long term impact. Finally, Nicaragua underlined the importance of technology transfer, capacity building and promotion of innovation in order to make a clear contribution to sustainable development.

191. The representative of Singapore thanked the co-sponsors for their effort and political will to submit a convergence set of products. This gave some hope that this work could be pursued with the wider membership at some stage. Singapore supported the non-paper because it reduced the length of the list, rationalized the categorization of products and cleaned up the ex-outs. It was an important step in trying to bridge the gap that currently existed in the CTESS and showed the tangible and practical aspects of the list approach. Nonetheless, this was just one step albeit a critical one. There were other environmental goods, such as biofuels, which could be beneficial to both developing and developed country Members and which were not currently on the list. Singapore looked forward to discussing the inclusion of such items and the issue of S&D treatment, which was another important area for developing country Members. To conclude, Singapore supported the paper and looked forward to working on it with other Members as a means of bringing the negotiations on Paragraph 31(iii) to a successful conclusion.

192. The representative of Argentina thanked the co-sponsors for their efforts to reduce the number of products. The main challenge was now to capitalize on the proponents' efforts. To do so, this set

of products needed be part of a specific context, as originally proposed by Argentina's integrated approach explained in document TN/TE/W/62. The process would fail if these products were only included in a list, as it seemed to be the intention of proponents. For the representative of Argentina, the word "set" in the expression "Potential convergence set" was only a synonym for list. The potential convergence set included different types of products, different modalities and different names but, structurally, it was still a list. Argentina was ready to work to identify products or criteria but within a specific context. Many problems identified by Ecuador, South Africa and other delegations could be resolved in a context and not within a pure list. Argentina acknowledged the effort made but was of the view that the wrong path had been followed.

193. The representative of Chile thanked the proponents for their effort to reduce the number of products and for the work done on ex-outs. He asked for clarification on the fact that not all Members were mentioned in the last column of the list. For instance, entry n°210 only referred to the United States. It was his understanding that the list was based on consensus and that all proponents agreed on the inclusion of these goods.

194. The representative of Hong Kong, China thanked the co-sponsors for their constructive move which would hopefully encourage a focussed engagement and spur further momentum in the negotiations, as highlighted in Paragraph 3 of the non-paper. Although Hong Kong, China was not a proponent of any of the items contained in the potential convergence set, it supported the list approach. A list approach would provide certainty to traders and was a better way to deliver on the mandate of Paragraph 31(iii). Hong Kong, China disagreed with Ecuador's statement that the list approach was not able to deal with NTBs and S&D treatment. Hong Kong, China was of the view that a clear list of products would facilitate the identification of NTBs, their adjustment and help identify the S&D treatment that should be applied.

195. In previous meetings, some Members raised concerns about the number of products on the proposed list. Hong Kong, China was pleased that proponents addressed such concerns by submitting a potential convergent list with a reduced number of products. Hong Kong, China did not expect the list to be accepted by all Members immediately as many Members had already expressed concerns about it. However, Hong Kong, China did not think that the original project approach was the solution: it was more an approach based on tariff exemptions rather than the tariff reduction and elimination mandated in Paragraph 31(iii). For Hong Kong, China, many of the concerns expressed could be addressed on the basis of a list for example, by adding products of particular interest to developing country Members, by removing some of the products or by providing suitable S&D treatment as well as an effective review mechanism. Hong Kong, China agreed with New Zealand that the list was not the end of the process but rather the beginning of a new phase of discussion. Hong Kong, China looked forward to working with Members in this phase of the discussions. In reply to Argentina's statement, Hong Kong, China pointed out its interest to see how the project approach and the list approach could be combined and whether this would address the concerns raised.

196. The representative of the United States thanked delegations for their initial reactions and concurred with the views expressed by Hong Kong, China, New Zealand and Norway. It was encouraging to hear that many delegations had already sent the non-paper back to capital for further analysis. The representative of the United States pointed out that the non-paper contained a set of goods because Paragraph 31(iii) mandated Members to work on the reduction, or as appropriate elimination, of tariff and non-tariff barriers to environmental goods and services. On services, she mentioned the extensive discussions that had taken place on this topic the week before. She noted that several delegations found it important to have criteria to evaluate the environmental benefits and credentials of these goods. The representative of New Zealand had already given some information on the criteria or parameters that had been used by co-sponsors when reviewing the full set of products. The co-sponsors had also updated the environmental benefits and credentials of these products, essentially providing the reason for keeping them in the selection. The United States looked

forward, hopefully at the next meeting, to receive some feedback from other Members on the criteria they used in reviewing the list and on goods they felt could meet their own criteria.

197. In addition, the United States looked forward to the identification of any NTBs with respect to any of the goods that were part of the non-paper as it had not been able to identify so far any specific NTBs. The United States also fully recognized that some of the ex-outs and other descriptions needed additional work and looked forward to Members' specific reactions to those and to any improvements which could be made. The United States was also trying to explore other flexibilities and was open to any ideas concerning the liberalization of optional ex-outs, ways to deal with administrative burdens or define further ex-outs. The United States looked forward to hearing more on products of interest to other Members that did not appear in the non-paper, including on the few additional products that had just been mentioned. Some delegations had said that the S&D treatment outlined in the non-paper was insufficient or did not meet the needs of developing country Members. The United States understood that this was an important element and was open to concrete and pragmatic proposals for flexibility or S&D treatment for developing country Members.

198. The representative of the United States also thanked all the co-sponsors for their hard work over the last few months. A constructive peer review process had taken place and a great deal of work had been carried out in capitals. The United States hoped this work would provide a constructive basis for further discussions under this mandate and looked forward to hearing more specific and detailed reactions at the next meeting.

199. The representative of Australia thanked the co-sponsors for the non-paper. It seemed to Australia that the co-sponsors had listened closely to the views and concerns expressed by Members in previous discussions and made significant compromises to try and accommodate these concerns. Australia considered that the new revised list was a very useful basis for developing a consensus list of environmental goods, thereby contributing significantly to the achievement of an outcome under Paragraph 31(iii). The list was now more user friendly with overlaps largely admitted and more clarity in the description of products. Australia welcomed the deletion of a number of products which were of concern to many Members, including Australia. Australia remained concerned however with some environmentally preferable products (e.g. entries n°104, 106, 107, 117, 118 and 126). It was encouraging that most products were now distinguishable by their use through ex-outs rather than a specific level of performance. On this basis many of the product lines on the list would be acceptable to Australia.

200. On ex-outs, Australia welcomed the additional precision provided by the co-sponsors to many product lines. Australia continued to consider this to be an important issue not only for the workability of the list at the customs level but also for presentational purposes. An environmental list needed to look like an environmental list and could not include too many non-environmental goods. However, Australia was not opposed to optional ex-outs as this would not change Members' rights and obligations and would not require Members to liberalize goods on the basis of them being environmental when they were not. Australia also welcomed the co-sponsors' recognition that further work on ex-outs was needed. While some ex-outs should be relatively straightforward to implement – for example, entry n°344 on photosensitive semiconductor devices with ex out photovoltaic cells and modules – other seemed more challenging – for example, entry n°307 on AC generators and ex-out for renewable energy plants. Moreover, some ex-outs did not seem to relate directly to the HS codes cited. Australia also welcomed the increased attention given to the environmental benefit of the products. For Australia, focussing Members' attention on this element would be useful to further refine the list. On this point, Australia noted the statement by Colombia, supported by others, regarding the identification of environmental goods. The additional explanation of the environmental benefits of specific products could address the question of criteria, as well as some of the concerns raised.

201. Australia noted that there were three product descriptions of condensers with essentially the same environmental benefit, yet differently described. It was unclear whether all the categories actually achieved the stated environmental benefit or whether there was one product line which appeared more relevant than others. On that point, some product lines still raised concerns regarding their multiple use and the fact that they could be used more broadly for non-environmental effects. This concern could be addressed, at least in part, with a closer attention to ex-outs and environmental products. On this point, Australia believed that it would be useful to link the ex-out to the environmental benefit, especially in item 252.

202. To conclude, Australia endorsed the idea of a review mechanism: environmental solutions were constantly evolving and the outcome under Paragraph 31(iii) would be enhanced if a mechanism for expanding and updating the list was included. However, Australia understood Members' concerns and believed that the design of a review mechanism would have to be looked at carefully. Australia finally pointed out that it had some concerns about including biofuels on the list as there were real question marks over the environmental nature of these products. Australia looked forward to working with the co-sponsors and other delegations to improve the list and to develop a concrete and effective outcome under this part of the mandate.

203. The representative of Korea thanked Members for their constructive and valuable comments. Korea considered that the submission of the potential convergence set of environmental goods had been made at the right moment for the negotiations to move into the next stage and hoped that it would expedite the negotiation process. For Korea, environmental goods enjoyed a unique position in the Doha Development Agenda; all Members agreed that trade in environmental goods would result in a triple-win outcome for trade, development and the environment. Korea had co-sponsored the potential convergence set with a view to harvesting these potential benefits.

204. As indicated in the non-paper, the list contained goods which had a high probability of being identified as environmental goods and that could serve as a basis for negotiations. This list was not a fixed one but a living one, which would be expanded or reduced during the discussions. Members' active participation in the discussions would greatly enhance the quality of the list. Korea had long maintained that environmental goods should be as specific as possible for customs operations. Korea believed that the potential convergence set had a high degree of specificity and even introduced an innovative concept of optional ex-outs. Korea did not believe that this potential convergence set of environmental goods was perfect, but it hoped that it would play a constructive role in facilitating discussions and building consensus on specific goods and that Members would be able to agree on a list of environmental goods which would contribute to sustainable development of all Members.

205. The representative of Brazil thanked the co-sponsors for their effort to present a renewed list. Brazil considered it an important display of negotiating flexibility and a welcome step in the process. The representative of Brazil made preliminary comments on the non-paper. As the issue of biofuels had been mentioned by other delegations in the discussion, Brazil recalled that it had tabled document TN/TE/W/59 in July 2005. Paragraph 10 of this document noted that "a definition of environmental goods should cover products such as natural fibres and colorants and other non-timber forest products, renewable energy including ethanol and biodiesel." Brazil stood by this position and said that renewable sources of energy were certainly environmental products. It was very difficult to sustain the argument that biodiesel and ethanol were not part of the environmental package.

206. As part of his specific comments on document Job(07)/54, he pointed out that Paragraph 1 stated that a triple-win outcome would lead to greater access to products that supported Members' environmental and development goals. This statement seemed to involve a hierarchy: first, market access, then through market access, development and environmental protection would be supported. For Brazil, there was no hierarchy between the three parts of the win-win-win.

207. The second paragraph of the non-paper said that the large range of products appeared to have been overwhelming to many Members in their effort to analyse their respective needs and priorities. The representative of Brazil strongly disagreed with this statement. Brazil knew perfectly well how to analyse its needs and priorities and was not overwhelmed by a list of 400 products. It was not a problem of technical ability; it was a problem of conceptual opposition. Brazil opposed the notion of a list. The second paragraph also illustrated some of the points that were complex in these negotiations, e.g. the issue of definition of environmental goods. The representative of Brazil recalled that at some point, it had been suggested to "define by doing"; now, these goods were redefined by redoing, which clearly showed the difficulty to agree on a potential convergence set.

208. Still on the issue of criteria, Paragraph 3 included a set of three criteria, namely the importance for the environment, the customs workability – which was nowhere to be found in the mandate – and a high degree of convergence among Members. For Brazil, the convergence among Members that proposed the list was clear but the possibility of reaching convergence among the broad membership remained to be seen.

209. On Paragraph 4, reference was made to a basis for negotiation; for Brazil, the word basis needed to be understood as a floor, not a ceiling. About 153 HS 6-digit subheadings represented this basis. It was very difficult to estimate the actual number of tariff lines these would cover: probably something around 400 or even 500 specific products at the 8-digit level. The fact that the list was a basis and that it was intended to be enlarged later on in the negotiation was confirmed in Paragraphs 7 and 10. Paragraph 7 read "the co-sponsors do not wish to discourage Members from re-introducing items that are not contained in the Annex". Therefore, the 153 HS 6-digit subheadings were only a basis and at any point in time, it would be possible to revert back to the 400 HS 6-digit entries. Moreover, Paragraph 10 reintroduced the notion of a living list. The representative of Brazil was not ready to issue a blank cheque on this.

210. Paragraph 9 dealt with S&D treatment, but the only concrete reference to S&D treatment was the notion of different implementation periods. For Brazil, that was not enough. The issues of technology transfer and NTBs were also important. Technology transfer was one of the reasons why Brazil supported the initiative put forward by India. Brazil would discuss bilaterally with India any potential problems but in general Brazil supported the direction followed by India.

211. Finally, the representative of Brazil made some general comments on the state of play in the negotiations. The delegate from the United States expected Members to discuss the content of the list at the next meeting. For Brazil, this was not the right direction: the next meeting should not take for granted the concept of list and focus on its contents. Brazil had concerns about the concept itself; before moving to the content, Members needed to discuss the concept of a list. From a broader perspective, Brazil thought that it was important to refocus the discussion bearing in mind the development dimension of the Doha Round. There was a need to strike a balance between trade, environmental and development concerns. The discussions of this Committee should make sure that developing country Members were able to produce environmental goods and gain a larger share of the international market for environmental goods.

212. The representative of Brazil recalled that in the history of the GATT/WTO it had taken decades for two crucial sectors – agriculture and textiles –to be fully integrated into the multilateral system. The WTO had learnt over time to deal with new initiatives and environmental goods were clearly a new sector. The important mandate contained in Paragraph 31 had to be fulfilled taking into account the facts of history. He pointed out that the avoidance of mandatory sectors was clear in the NAMA package. However, for Brazil, the list had been conceived as a mandatory sector. To conclude, the representative of Brazil recalled that this was a development round and that trade liberalization had a history that needed to be respected, which could give examples of ways to move forward.

213. The representative of Pakistan also appreciated the effort of the co-sponsors to reduce the list of products. He noted that in the industrialized world, tariffs on these products were almost insignificant while tariffs in developing country Members were considerably high. This did not mean that developing country Members did not have an interest in promoting environmental mitigation efforts. He pointed out that most developing country Members did not have the capacity to invest in this sector as the priority was on poverty, which had detrimental effects on education, health and other social priority areas. The list in its present form, no matter its length and its content, still reflected commercial concerns of a few Members. The representative of Pakistan asked the proponents whether they could demonstrate that the impact of the list was equally positive on promoting trade gains and addressing development concerns of developing country Members.

214. The representative of the European Communities welcomed the constructive engagement among Members. However, he pointed out that none of the questions raised so far in the discussion were new; this was a sign that the key difficulties in this negotiation had already been identified. Questions relating to product coverage, liberalization at 6, 8 or 10 digits remained and the co-sponsors had worked hard to accommodate many of the concerns. The fact that there was a possible convergence set of 153 tariff lines demonstrated that many of these concerns had been incorporated. The European Communities encouraged Members to apply these questions to the tariff lines proposed. This would allow for a serious negotiation on the coverage of the convergence set, the environmental benefits and the level of liberalization. He encouraged delegations to work further on these aspects for the next meeting.

215. The representative of Egypt said, in response to the European Communities, that there were no new questions because a number of delegations refused the approach altogether and had repeated these questions to the proponents during a year and a half of technical discussions. Members had also indicated the difficulties they had with many of the products contained in the individual lists which were mostly of an industrial nature. Egypt had made the point that these were not environmental and did not fulfil the mandate. WTO Members were in uncharted waters as Brazil, South Africa, India and Pakistan also made it clear. There were no new questions because the issue had been discussed at length in the CTESS and the lack of definition remained the main problem.

216. There was no easy and straightforward answer to the definition of an environmental good. The mandate of the CTESS was not to discuss market access for some goods proposed by a few Members. This was not a NAMA plus negotiation. The mandate of the CTESS was to come to terms with the creation of a win-win-win situation for the environment, development and trade. As mentioned by Brazil, it was not an easy task for this group and a convergence among proponents was not enough. There was a need to converge with other approaches that were on the table.

217. Egypt understood some of the difficulties mentioned by Members concerning the project approach but other and new ideas had been advanced by Argentina, Colombia and India. This would help move the process forward rather than proposing again a single minded approach to Members. The future discussions should not only be about the repackaged list. Delegations needed to understand the difficulty of developing country Members and try also to reach out to the other ideas on the table in order to move towards a holistic outcome.

218. Egypt also noted that the discussions so far on the content of the previous individual lists had shown that very few products had really passed the test of the single environmental end use, suggested by proponents of the list themselves. This was a difficulty that remained on the table. The representative of Egypt welcomed the fact that the United States showed willingness to engage on all of these issues. However, the expectation that Members would only discuss one approach in this Committee was unrealistic and was not going to move the work forward. There was a need to balance the development objective of the Doha Round with the trade concerns of Members but also with the

environmental issues at hand which were quite complex and did not provide simple and straightforward answers.

219. The representative of New Zealand welcomed comments on the non-paper and identified four areas of concern for delegations. First, on the mandate, he understood Members had concerns on environment, development and NTBs. He pointed out that the update of the environmental benefits had been tested not only with the group of co-sponsors, but also with other Members. The representative of New Zealand was ready to justify any item on the list. For instance, he was ready to answer Australia's question on condensers even if his explanation might not be convincing for some delegations. In New Zealand's view, there was a need to discuss these questions in the CTESS.

220. On development, the representative of New Zealand agreed that this topic should represent a central part of the discussions. He recalled that two documents put forward by New Zealand (Job(06)/140 of 8 May 2006 and Job(06)/170 of 7 June 2006) provided some information on the development benefits of the products in a range of categories. At the time, a good discussion had taken place on these development benefits. In terms of trade benefits, the representative of New Zealand understood the concerns on tariffs and trade interests raised by some Members. He recalled New Zealand's argument, in document TN/TE/W/49/Suppl.1, that the items proposed were of significant trade interest to developing country Members. At this point in the negotiations, it would be useful to actually discuss these concerns as well as ways to weigh together the environmental, the development and market access benefits. For New Zealand, there was a need to get specific and to look at products without prejudice to the approach. New Zealand's list had been reduced by half as some of the initially proposed goods did not have, in some Member's view, an environmental or development benefit. For many co-sponsors, difficult decisions had been taken in order to delete some items from the potential convergence set.

221. On NTBs, the representative of New Zealand shared the concerns raised by a number of delegations. He recalled New Zealand's position that the project approach was an NTB for its exporters and small and medium enterprises (SMEs). While large economies and companies with major trading interests and administrative resources could deal with a project approach, small companies would have more difficulties to deal with it. He noted that a number of delegations talked about criteria and recalled that Members in the CTESS had had long exchanges about this since 2001. Although those discussions showed a good level of engagement, it was not possible to move forward on that basis. This did not mean there should not be criteria. In fact, Members should review the list using their own criteria. The representative of New Zealand looked forward to discussing with Members the criteria they used and the reasons for certain products to meet or not their criteria.

222. The second area of concerns was about products, dual use and ex-out questions. On products, he recalled that the WTO Secretariat's compilation list contained 480 entries while the convergence set included 153 entries; that represented a 70 per cent reduction. New Zealand had to make some difficult decisions and lost, for instance, methanol and biodiesels. The representative of New Zealand was encouraged by the fact that some Members had expressed their interest in those products at the meeting. That was the reason why the paper included the possibility to reintroduce items that other Members thought were good for the environment and development. He also acknowledged that the issue of dual and multiple use was important. For New Zealand, if the majority of the products at the HS 6-digit level served an environmental purpose or were key to an environmental sector – for instance sewerage treatment equipment – then all those products should be liberalized.

223. On the question of ex-outs, the co-sponsors had done a lot of work by tidying them up, making them more specific and consulting with customs administrations. New Zealand hoped that other Members could also consult with their customs administrations before the next meeting in order to engage in a dialogue on these issues. He also acknowledged Australia's point that the ex-outs still needed some work. Concerning the language of Paragraph 3 of the non-paper, he explained that the

set of items was put forward because co-sponsors thought that it might offer the potential for a high degree of convergence. New Zealand would like to discuss concerns on products, such as those raised by Australia on condensers and India on a whole range of items (entries n°244, 245, 249, 279, 175, 177) and try and persuade delegations of their relevance.

224. Concerning environmentally preferable products, the representative of New Zealand noted that the group of co-sponsors had discussed this issue at length. Although none of the co-sponsors had a trade interest in these products, the convergence set included some of them because at least five other Members had a significant interest in them, for trade, development and environmental reasons. He was open to a discussion about these products, in particular with those Members that had a trade interest.

225. On Chile's question about the reference in the last column of the list to particular Members, he explained that it was intended to remain faithful to the compilation list and reflect Members that had initially proposed products. He confirmed however that the list was a potential convergence set. He also welcomed the discussion on potential additional products and noted Australia's concerns on these products. In his view, this was exactly the type of discussions that was needed in this Committee.

226. The third area concerned S&D treatment which was a critical element of this negotiation but also more generally. He recalled that New Zealand had co-sponsored a proposal put forward in the NAMA Negotiating Group, which addressed this issue. New Zealand was ready to discuss S&D treatment and listen to sensitivities and concerns of Members, and to consider ways of reflecting S&D treatment, including phase outs.

227. The last area related to the review mechanism. He pointed out that a review mechanism was different from a living list. In response to some delegations' concern that this would amount to signing a blank cheque, he pointed out that New Zealand was ready to discuss this issue further with Members.

228. To conclude, the representative of New Zealand suggested to divide the discussion in three parts: (i) products, including their environmental and development benefits, issues of dual use, ex-outs and any sensitivities – without prejudice to the approach; (ii) S&D treatment; and (iii) the review mechanism. For New Zealand, some of those discussions could be held in smaller groups. A new phase had started with this non-paper and its 70 per cent reduction in scope was a step that could generate momentum in this process.

229. The representative of South Africa recognized the effort made by the co-sponsors to shorten the list. Concerning the invitation to discuss, she pointed out that this needed to be done both ways. She found it difficult to discuss the list when fundamental problems regarding the list remained unaddressed. South Africa did not like the list any more than the proponents the project approach. There was a need to engage on both approaches in a way that moved the process forward. For South Africa, a list presupposed a certain way of dealing with S&D, e.g. longer implementation periods and lower tariff reductions. The representative of South Africa informed the Committee that in the near future South Africa was going to develop a strategy in the environmental sector. The South African government wanted to ensure that this negotiation would not undermine that domestic process as this was intended to be a win for its economy, its environment and its development. She noted that South Africa worked very closely with SADC countries on these issues. Even though the project approach had its difficulties, many aspects appealed to South Africa. It was difficult to see ways to find a solution which would be satisfactory to all and deliver a win-win-win outcome.

230. The representative of Japan thanked Members for their comments on the co-sponsored non-paper. It welcomed South Africa's environmental development plan and looked forward to starting discussing this kind of issues in detail, including on products, in order to move the process forward.

231. The Chairman thanked the co-sponsors of the non-paper for their significant contribution. This was the result of intensive work on their part. From the discussion, it was clear that Members acknowledged these efforts. Comments had been made on the elements of this paper as well as the need for flexibility. One delegation mentioned the possibility of coming forward with a new paper in the near future. If Members wanted to bring new ideas or proposals for discussion, they needed to do so quickly. As in other parts of the mandate, it was necessary to start focussing on outcomes. This would require a vigorous effort from all delegations to address the needs and concerns of others as they pursued their own interests.

IV. OTHER BUSINESS

232. The Chairman was of the view that the meeting had been most productive. The new submissions on all parts of the mandate had been purposeful and clear and helped the CTESS hold focussed discussions. The CTESS was now in a position to explore the framework of an outcome on certain parts of the mandate. On Paragraph 31(ii) in particular, there seemed to be broad agreement on the basic elements for an outcome. Time had come to bring these elements together in a textual form in order to have a concrete basis for the forthcoming discussions. On Paragraphs 31(i) and (iii), important progress had been achieved, in particular with the recent submissions tabled by Members. Next, the CTESS would need to start developing convergence in order to be able, at the appropriate time, to move towards an outcome in these two areas as well. The Chairman stressed that the CTESS should not be left behind other groups.

233. The Chairman intended to hold two formal meetings before the summer recess, in June and July. He would also engage in a process of consultations with delegations in different configurations. For transparency and inclusiveness, he would report on these consultations to the broad membership in the formal meetings. Depending on the progress of the negotiations, he would call other open-ended meetings to discuss new developments.

234. The CTESS agreed to the renewal of the ad hoc invitations issued for that meeting at the next meeting of the CTESS.[19]

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[19] The following organizations will be invited to participate as *ad hoc* invitees: UNEP, UNCTAD, the World Customs Organization (WCO), the OECD, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and the United Nations Framework Convention on Climate Change (UNFCCC).